

TRUST FUND REFORM

JOINT HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

AND THE

COMMITTEE ON ENERGY AND
NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

REPORT OF THE GENERAL ACCOUNTING OFFICE ON PLANNED TRUST
FUND REFORM IN THE DEPARTMENT OF THE INTERIOR

JULY 14, 1999
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REPORT OF THE GENERAL ACCOUNTING OFFICE [GAO] ON PLANNED TRUST FUND REFORM IN THE DEPARTMENT OF THE INTERIOR

WEDNESDAY, JULY 14, 1999

**U.S. SENATE COMMITTEE ON INDIAN AFFAIRS, MEETING
JOINTLY WITH THE COMMITTEE ON ENERGY AND NATURAL RESOURCES,**

Washington, DC.

The committees met, pursuant to recess, at 9:35 a.m. in room 216, Hart Senate Office Building, Hon. Ben Nighthorse Campbell (Chairman of the Committee on Indian Affairs) presiding.

Present from the Committee on Indian Affairs: Senators Campbell, Murkowski, Inouye, Akaka, Thomas, and Domenici.

Present from the Committee on Energy and Natural Resources: Senators Murkowski, Domenici, Campbell, Thomas, Burns, Bingaman, and Akaka.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The Committee on Indian Affairs and the Committee on Energy and Natural Resources will come to order for our second joint hearing on Indian trust funds.

Because this is a multifaceted issue, I need to stress up front that our committees are not here to relitigate issues that are properly before Judge Lambert's court. Our committees have oversight responsibility over Indian trust funds and, more specifically, over the 1994 American Indian Trust Management Reform Act.

For over 2 years, the Department of the Interior has taken steps to implement its high-level implementation plan to reform the badly-broken trust management system. In testimony at prior hearings, Indian tribal organizations, trust experts, and Paul Homan, the former special trustee and a renowned private sector trust expert, all testified that they do not have the confidence that the Department's reform plan will accomplish the needed objectives.

To guarantee that an independent analysis of the plan was undertaken, I asked the General Accounting Office to analyze the Department of the Interior's proposed trust reform plan. On April 28, 1999, the GAO submitted its report to Congress. The GAO concludes that the GAO has no assurance that the new Asset and

Land Records Management Service will meet its specific performance security and data management needs or that the service can be delivered on schedule and within budget.

This committee is interested in the long-term success of a reformed trust management system. We are not interested in yet another computer system that will have to be abandoned after spending millions of dollars. This is the situation with the BLM's ALMRS system, the Internal Revenue Service billion-dollar boondoggle, and others.

The GAO has documented these failures in the past, and I am concerned that we are looking at a similar pattern with HLIP. In addition to the billions of dollars at stake for individual Indians and Indian tribal account holders, there are hundreds of millions of taxpayer dollars at risk of being wasted. That's not just my opinion or Senator Murkowski's opinion; it is the opinion of the General Accounting Office.

The committees should recognize the only entity with confidence in the Department's plan is the Department itself. Unfortunately, we asked Secretary Babbitt to appear today and he declined, and his reason for declining was that there is ongoing litigation in the *Cobell vs. Babbitt* case.

Secretary Babbitt's statement for the record includes some of the reasons precisely why we should not simply dump more money into the plan—and I quote from page 2 of his statement. "The realities of our current situation," Secretary Babbitt says,

Significantly outdated trust management systems; a need to make corrections as quickly as possible; and limited trained, experienced personnel have called for an accelerated approach to the trust asset and accounting management systems, to ensure success.

I believe we will hear today there is a need to reform this system, but the plan of the Secretary is just not the way to bring about the needed changes. This is also an appropriations issue and, frankly, I do not share the Secretary or the Assistant Secretary's view that they are willing to sacrifice funding for other Indian programs for the sake of throwing more money and more money at the trust reform plan, and I sincerely hope the Senate and the House take a very close look at the Department, at what they are proposing, and whether the funds requested will be effectively spent.

Chairman Murkowski, did you have a statement?

STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you very much, Senator Campbell.

I am very pleased that we could join together in this joint hearing, the Committee on Indian Affairs and the Committee on Energy and Natural Resources.

I fail to understand the rationale of the Secretary and his reluctance to come forward and face the needed changes for managing the trust for the various tribes and his continued attitude that it must remain in the Bureau of Indian Affairs [BIA] as a function. To me, this is a detailed accounting, contractual service that could be available through any number of adequate trust companies that would be prepared to bond for the services to assure thorough accounting and recordkeeping.

What we've got here is about a \$2.4-billion unreconciled trust account, and what we've got is no viable plan to basically fix it. And I'm disappointed that we could not have a witness from the Department of the Interior, because I think they have an obligation to the committee to give us an explanation, particularly in view of, as you pointed out, Senator Campbell, the GAO evaluation of the computer plan. They don't think that the Interior Department has adequate assurances that the plan will work. Well, that's not very comforting.

Mr. Homan, the former special trustee, has said the fix won't work. That's even more disconcerting.

The Indian tribes, through the Intertribal Trust Monitoring Association, don't seem to have a great deal of confidence in the process.

So we're left with the only people that apparently think this will work is the Department of the Interior. They have declined, as you noted, to come in because of ongoing litigation, but I don't think that's an adequate explanation to this committee. I think it is more of a dodge than an excuse, and the administration is constantly in litigation. This is nothing new. When it is convenient, they are very happy to appear in support of legislation to resolve issues, and I can quote the Secretary relative to a statement that he made at our last hearing. "If you have a hearing, I'll be there." Well, obviously he's not here today, and maybe there's a good excuse for that, but somebody from the Department of the Interior should be here. We may have to have another hearing to hear from the Department of the Interior.

The Department of the Interior has been told time and time again that they are driving the trust fund bus supposedly off the cliff, and the only response seems to be to ask Congress for more money for gas for that bus.

You know, I don't know where the appropriators are in this—maybe they fear the rhetorical attacks from the Department of the Interior if they don't fund the program—but it is my understanding that the Department of Interior has got about \$78 million in the Senate appropriations bill and \$90 million in the House appropriations bill to fix this situation, which the experts say is unlikely to work.

We've got a situation here where the mentality within the Department seems to just be closed to any contractual evaluation of services that clearly are done every day in the private sector for various firms and organizations, and I don't see why this has to be something that is unique to stay within the BIA when clearly it is not a function, necessarily, of the BIA or their role.

I think it is fair to say that the Secretary didn't create the trust fund problem, but he is the first Secretary to be given the tools to fix it back in the 1994 Trust Reform Act, and we haven't seen it fixed. There seems to be a resistance within the Department of Interior and the BIA to fix this. They seem to want to throw more money and to suggest that that's the answer to the problem, retaining all the powers in the Department while using the taxpayers' money to shield actions to thwart real trust fund reforms which would benefit Indian trust fund holders, and perhaps decrease Agency power a little bit, but not very much. After all, this is a function of accounting, and it is a detailed function that ordinarily

is done in a manner of format that has proven to stand the test of the auditors, controllers, and so forth, and those who evaluate, and that certainly hasn't been the case as far as the ability of the BIA to manage these trust accounts.

So I would hope, Senator Campbell, that jointly we can get this matter behind us and get on with the obligation that the Department of the Interior has, which is to maintain adequate and accurate accounting to America's Indian tribes that they provide those trust services for.

I see some Members on my side as well as your side, so why don't you go back and forth?

The CHAIRMAN. I'd like to mention to my colleagues here, there has been a conference called for 10:30 a.m. and I know many people have to go to that. We have only three witnesses, so I'd ask you, if you have some comments, that you'd keep them relatively brief.

Who was next?

Senator Thomas.

STATEMENT OF HON. CRAIG THOMAS, U.S. SENATOR FROM WYOMING

Senator THOMAS. I just want to say I was on the House as ranking member of the subcommittee 7 years ago when we started working on this. I sense we're not much further off or better off than we were then, and I'm sorry for that.

[Prepared statement of Senator Thomas appears in appendix.]

The CHAIRMAN. We've spent a lot more money on that.

Senator Bingaman.

STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

Senator BINGAMAN. Thank you, Mr. Chairman.

Let me just say that I appreciate the fact that the hearing is being held. I do think, clearly, Department of the Interior, over many decades, has mismanaged these trust fund accounts. I don't think there's any question about that. I do think there has been more activity in trying to deal with the problems by this secretary than by any previous secretary that I have seen since I came to the Senate 17 years ago. I understand that the position he has taken is that, since he is in litigation on the very issues that are going to be addressed here at the committee and was testifying this last weekend on those issue in Federal district court here in the District of Columbia, he did not feel it appropriate to have a witness here talking about the same issues that are pending before the court. I think that's the position.

Now, maybe that is one that others don't agree with, but I think that is the position the Secretary has taken.

I do think there are real questions. GAO faults the Department in the way they've gone about selecting the computer system. I think we need to hear about that and find out if there is a problem there we need to address.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Burns.

**STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM
MONTANA**

Senator BURNS. Thank you very much, Mr. Chairman, and thank you for holding these hearings.

I'll just submit my statement, but I did want to make a point.

This problem was looming back in 1993, first brought to the attention of the Energy Committee, and at that time then Senator Hank Brown of Colorado and I offered a bill to standardize accounting systems in the U.S. Government. We had a problem in the Interior Department. We had a problem in the Defense Department. And we were soundly defeated on that. I mean, it didn't even get to the take-off stage. I don't think we ever made it to the active runway, to be honest with you.

For the money that we have appropriated and for the money that we have spent, and what we have gotten is pitiful. We could have gone outside of Government, hired the most powerful auditing firm in America, accounting firm, and solved this problem probably in 2 years, probably in two years. But that was soundly defeated. That idea was soundly defeated by the bureaucracy.

Now, these are moneys that are very important to a lot of my citizens in the State of Montana, and we can't find them and we don't know where they are. We don't know whether we are on foot or on horseback in this whole situation. Nobody does. We're groping in the dark, and I see no other way, computer systems be damned, other than going outside of Government and having that whole mess audited and to find out where we are, how we got there, and what we have to do to fix it.

And for all these fancy salaries that are running around this town and all over this country to manage these funds, we're sure not getting any satisfaction on this committee or, Mr. Chairman, your committee, and we're sure not getting any satisfaction for the people whose money has been entrusted in this particular fund.

So I think it is time for drastic action. I'm not going to make any excuses for anybody over the last—and I think this is a culmination of things, but, for crying out loud, the way we're trying to solve the problem is not acceptable to this Senator and it should not be acceptable to the tribes and the peoples whose money they are trying to manage.

I thank you for having these hearings. I have another hearing on appropriations that I must lead, but I am following this issue very, very closely, and I thank you.

[Prepared statement of Senator Burns appears in appendix.]

The CHAIRMAN. Yes.]

Senator Akaka, any comments?

**STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM
HAWAII**

Senator AKAKA. Mr. Chairman, I, too, want to thank you for having this hearing and I want to extend a warm welcome to our witnesses. It is important to gather more information and to see learn well the HLIP, the high-level implementation program is working to improve the management of the Indian trust funds.

We hope we can help to improve the system based on what we learn from our hearings.

Thank you, Mr. Chairman.

The CHAIRMAN. Pete.

Senator DOMENICI. I have a statement but would just put it in the record. Thank you very much.

The CHAIRMAN. Without objection, so ordered.

Senator DOMENICI. I stand ready to help wherever I can.

[Prepared statement of Senator Domenici appears in appendix.]

The CHAIRMAN. And we'll—

Senator MURKOWSKI. I'd like to just point out one thing.

As you know, Senator Campbell and I have introduced legislation, which is S. 739, to address a part of the trust fund problem.

I am personally inclined to think that we ought to look at the inclusion of mandating that the Department of the Interior go outside and contract for services, because I just don't see this fitting into the traditional role of the BIA to develop an expertise in the management of these trust accounts, so I'm looking toward that and may amend our bill.

That's all I've got, but I want to hear from the witnesses.

The CHAIRMAN. And we will now hear from Keith Rhodes, the director of the Office of Computer Information and Technology Assessment from the General Accounting Office; Mark Fox, president of the Intertribal Monitoring Association of Indian Trust Funds; and Mr. Don Gray from Lillick and Charles of San Francisco.

If all three of you would come to the table at the same time there, please. Your complete written testimony will be included in the record. You may abbreviate if you wish.

Let's see. We have four people sitting, so who is accompanying who?

Ms. CALBOM. I'm accompanying Mr. Rhodes.

The CHAIRMAN. Ms. Calbom, you are accompanying Mr. Rhodes?

Ms. CALBOM. Yes.

The CHAIRMAN. Okay. Yes.

Mr. Rhodes, why don't you go ahead and start?

STATEMENT OF KEITH RHODES, DIRECTOR, OFFICE OF COMPUTER AND INFORMATION TECHNOLOGY ASSESSMENT, ACCOUNTING AND INFORMATION MANAGEMENT DIVISION, GENERAL ACCOUNTING OFFICE, WASHINGTON, DC, ACCOMPANIED BY LINDA CALBOM, DIRECTOR, RESOURCES, COMMUNITY AND ECONOMIC DEVELOPMENT, ACCOUNTING AND FINANCIAL MANAGEMENT ISSUES

Mr. RHODES. Thank you.

Mr. Chairman, members of the committees, thank you for inviting me to participate in today's hearing on the Department of the Interior's effort to improve its management of about \$3 billion in Indian trust funds and about 54 million acres of Indian land.

As you are well aware, this effort is focused on correcting long-standing trust fund management weaknesses, not just information systems.

Earlier this year, at the request of the Senate Committee on Indian Affairs, we reported on Interior's improvement plan to assess whether it provided an effective solution to addressing these long-standing problems. In particular, we assessed whether one of the most critical improvement projects, the acquisition of a new service

for managing Indian assets and land records, known as the Trust Asset and Accounting Management System, or TAAMS, would cost effectively meet trust management needs.

Today, I will discuss how we conducted our assessment of the TAAMS acquisition efforts, the results of our evaluation, and our recommendations to Interior to address our findings, the current status of TAAMS, and the challenges still confronting Interior's implementation of this important system.

The purpose of the TAAMS project is simple: Obtain a modern, integrated information system for managing Indian assets and land records, including distributing income to owners and maintaining title and ownership records.

In July 1998, we began our assessment of TAAMS, while Interior was specifying the functional requirements. At this point, the critical questions are the following: Did the agency define an integrated architecture for its business operations? Did the agency assess the value and risks of a sufficient range of alternatives for solving its business problem? Did the agency take prudent steps to minimize acquisition and development risks?

With regard to Interior's initial systems acquisition efforts, our April, 1999, report found that Interior was not following sound practices that would: No. 1, help ensure that TAAMS cost-effectively met trust management needs; and, No. 2, reduce development risks to acceptable levels.

First, it had not defined an integrated architecture for Indian trust operations; and, second, Interior did not follow a sound process for: No. 1, ensuring that the most cost-effective technical alternative was selected; and, No. 2, reducing acquisition risks.

By not following these accepted best practices for technology service acquisitions, Interior was not necessarily dooming TAAMS to failure; rather, it was further elevating the risk of encountering problems in the development stages that could delay implementation and/or unnecessarily increase costs; thus, we recommended that Interior develop and implement an effective risk management plan and ensure that all project decisions are based on objective data and demonstrated project accomplishments and are not schedule-driven.

Now that TAAMS is in its testing phase, it is critical for Interior to follow sound practices. Along these lines, I would like to highlight our expectations for the next few months, beginning first with an illustration, which you can see on the board over here, of the stages of system testing that we would expect Interior and its contractor to follow.

In considering this—

Senator MURKOWSKI. Mr. Chairman, is there a smaller copy of that in our materials somewhere? I can't—

Mr. RHODES. Yes; it is actually figure No 2 on page 13.

Senator MURKOWSKI. Thank you.

Mr. RHODES. In considering this illustration, it is important to keep in mind that complete and thorough testing is essential to provide reasonable assurance that new or modified systems process information correctly and will meet an organization's business needs.

To ensure that tests are thorough, organizations should perform tests in incremental steps, as you can see along the right side of the “V,” the stages of testing. It’s not one large test, it is a series of incremental tests.

That is, they should first verify that each component of the software faithfully implements the detailed design. This is performed in the area of unit testing.

Once this is done, they should verify that combined units of software work together as intended. This is in the next level, called “integration testing.” From there, they should verify that a complete system satisfies functional requirements using quantitative tests. That’s at the third level, called “system acceptance testing.”

And, finally, they should verify that the system addresses the user’s needs, which is at the fourth level, user acceptance testing.

To ensure tests are complete, organizations should have well-defined, functional, and detailed requirements. If a requirement has not been defined, it is unlikely that a test will uncover a defect. This requirement’s definition section is the first part of the “V,” the left side. All of this should be done prior to engaging in any testing.

We would also expect Interior and its contractor to establish an effective management framework for testing. At a minimum, roles, responsibilities, and expectations for testing should be defined, a test and evaluation plan should be written, and guidance defining policies, principles, strategies, standards, and processes relevant to planning, executing, and reporting on each level of testing should be issued.

We would further expect the contractor Interior has hired to give it an independent assessment of the project to ensure that generally-accepted test standards and guidance are being met. As we review TAAMS, we will evaluate whether an effective management framework has been established for tests and whether the tests, themselves, are planned and conducted in a structured, disciplined, and incremental fashion.

However, evaluating TAAMS based solely on testing will not ensure that Interior’s trust needs will be met.

First, it is likely that the system testing phase will not uncover all errors in the modified commercial system. In fact, testing performed through the system test phase often catches less than 60 percent of a program’s defects. The remaining errors are found through other quality assurance practices, such as code inspections, or by end users after the software has been put into production; thus, it will be important for Interior to implement a quality assurance program that is both rigorous and well-structured.

Second, even if TAAMS works as intended, Interior will still need to ensure the integrity of the data that are loaded into the system, establish adequate policies, procedures, and controls for operation of the system, and provide timely training and equipment to system users. Without any one of these essential ingredients, the success of the TAAMS project could be undermined.

Third, in going forward, it will still be vital for Interior to define a system’s architecture. Without blueprints to guide and constrain TAAMS and future information system development efforts, Interior will not have a systematic way to preclude either inconsistent systems design or development decisions or the resulting sub-opti-

mal performance and added costs associated with incompatible systems.

Mr. Chairman, that concludes my statement, and I would be happy to answer any questions you or any of the Members might have.

[Prepared statement of Mr. Rhodes appears in appendix.]

The CHAIRMAN. Ms. Calbom, are you here as a resource person, or did you have a statement?

Ms. CALBOM. I don't have a statement, Mr. Chairman.

The CHAIRMAN. Okay. We'll go to Mr. Fox.

STATEMENT OF MARK FOX, PRESIDENT, INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS, ALBUQUERQUE, NM

Mr. FOX. Mr. Chairman and honorable members of this joint committee, I'd like to say good morning. Thank you for this opportunity to be here.

My name is Mark Fox, and I am vice chairman of the Three Affiliated Tribes of the Fort Berthold Reservation in North Dakota. That's the [Native words] Nation. I also serve as chairman of ITMA, the Intertribal Monitoring Association on trust funds, which represents a consortium of approximately 40 tribes who have a vested interest in tribal trust funds matters.

Mr. Chairman and members of the committee, the ITMA strongly supports the Department's appropriation request of approximately \$100 million for trust reform in fiscal year 2000; however, tribes believe the Department has taken an unacceptable risk with tribes' and taxpayers' money.

Experts have determined that the plan the Department is proposing is seriously flawed and is likely to result in developing systems that will fail to meet trust standards. For that reason, ITMA has concluded and this testimony proposes that it is imperative that overall control of the trust reform effort be placed under authority of an independent entity such as the Trust Reform Control Board, with trust reform expertise, and that does not have the conflicts of interest that the Department has.

The critical question before the committees today is whether Congress and the Indian trust beneficiaries should take the gamble of trusting the Interior Department to develop and properly implement the trust reform plans without any outside controls.

At the March 3, 1999, hearing, Chief Tillman of the Osage spoke of how, for 150 years, the Interior Department told tribes and individual Indians, "Trust me." And we trusted them, to our own detriment. And, once again, the Interior Department is telling us and the Congress, "Trust us."

In ITMA's view, it would be a big mistake to trust the Department to properly implement such a large project without the benefit of experienced trust experts. Consider the following:

No. 1, every outside trust expert that has reviewed the Department's plans has expressed serious concerns that the plan is likely to fail.

No. 2, other than individuals within the OTFM, or Office of Trust Funds Management, such as Donna Irwin and a few others, the programs and systems being installed by the Department are being

administered and implemented by individuals who have little or no specific experience or expertise on trust systems. This type of management would never be tolerated in any other situation and would be a breach of the United States's trust responsibility to the Indian beneficiaries.

Indian people demand the same level of expertise that the users of any bank would demand. The entire trust reform continues to be under the jurisdiction of the very offices that have mismanaged the trust for the 150 years thus far. Management experts say and ITMA believes that to correct this failed system requires an outside entity to come in and conduct cleanup. ITMA is concerned that reforms will be implemented in a way that insures any improprieties by the Department are not brought to the forefront to be dealt with appropriately.

In summary, according to the outside experts, the Department is requesting sole control over 100 million to implement a plan that has a high risk of failure, which will be implemented by persons who have little or no specific expertise in trust reform.

It is instructive to compare the efforts to reform the Indian trust systems with Congress' efforts to reform the District of Columbia government. The District of Columbia Financial Responsibility and Management Review Board was situated outside of the District of Columbia government and was composed of highly-respected and experienced financial and management experts. The legislation gave the Control Board the full and exclusive authority to develop the plans for reforming the District of Columbia government and gave it overall authority for implementing those plans. Today, four years after the Board was created, it appears the District of Columbia government has made major strides.

ITMA recommends that Congress enact legislation creating the Control Board for the trust reform that is similar to the one that successfully engineered to reform the District of Columbia government.

Attached to our testimony is proposed draft legislation that would enact such an approach.

The proposed legislation would provide for the following:

No. 1, establishment of a trust management and reform authority which would be housed within a regulatory authority similar to the Federal Housing Finance Board.

No. 2, the trust management and reform authority would have the full authority to develop the plans for reform of Interior's trust systems and would hire the outside experts to accomplish the task. While this will delay the reform effort for a short time, it will result in a plan that is developed by objective experts.

The trust management functions would remain within the Department of the Interior, but the authority would have control to direct implementation of those plans, working with the Department but having the final say.

The authority will sunset once the reform effort is completed; however, to ensure that the new systems installed within Interior do not deteriorate, the bill calls for an agency similar to the Federal Housing Finance Board to establish an office of Indian trust regulation, which would examine the Department's trust management on an ongoing basis.

ITMA urges the Congress to enact such legislation prior to the Department's expending the fiscal year 2000 appropriations to ensure funds are appropriately used. ITMA has endorsed the concept of S. 739, subject to certain modifications as proposed by ITMA. The bill, introduced by the honorable Senators Murkowski and Campbell, provides for the outsourcing in investment and management of certain Indian trust funds.

I want to say, gentlemen, thank you for this opportunity this morning to express our concerns on behalf of ITMA. It has been an honor to be able to do this this day.

[Prepared statement of Mr. Fox appears in appendix.]

The CHAIRMAN. Thank you.

Mr. Gray.

STATEMENT OF DON GRAY, ESQUIRE, LILICK AND CHARLES, LLP, SAN FRANCISCO, CA

Mr. GRAY. Thank you.

Chairman Campbell, Chairman Murkowski, ladies and gentlemen, my name is Donald Gray. I am an attorney with a private law firm. For over 25 years I have specialized in establishing and reconstructing active asset complex commercial trusts. Our business, to put simply, is the fixing of long-term trusts involving billions of dollars in assets.

I completely agree with the findings of the GAO in its latest report. The GAO's criticisms of the procurement and foundational architecture deficiencies of the Department of the Interior's TAAMS program is a symptom of a much-greater problem, in my view. The symptom, highly prevalent in the private sector as well, is an over-reliance on and a complete misunderstanding of the effectiveness of big-ticket computer fixes. In short, this is form over substance, derived from apparent desperation on the part of Interior and the BIA.

The more fundamental problem, not just the symptom, is an agency that is struggling with and currently drowning in fatal conflicts of interest. I concede great success by the Department of the Interior in improving the lot of American Indians on many fronts, but that agency's defensiveness and inability to cope with dangerous conflicts, which could lead its staff to obscure past trust mistakes at the expense of IIM trust reform, makes it the very last entity in this country which should serve in the role as trust reformer.

As a professional trust lawyer, I was absolutely astounded that Interior, rife with conflicts, completely devoid of financial trust expertise after Mr. Homan's departure and, if you will pardon the expression, patently clueless as to the duties of a professional fiduciary, had been permitted to hold on to and to mismanage trust reform for this long.

Admittedly, I live in a strange world where the ultimate concerns of trust administrators, accountants, lawyers, and supervising agencies are to meet the most exacting standards imaginable for entities which manage assets and money for other people.

But this is precisely the world which must now shed its light on the trust reform process. It simply does not seem to occur to Interior that it is going down the wrong road—a road that will end in

further embarrassment for it and its bureaus, and in no real solution for the trust reform effort.

I have studied this problem for some time and in some depth. I have no client paying me for my research or my views. I simply want this forum to seek the professional trust help that is both essential and available.

My written testimony outlines a professional trust approach to solving this problem. It suggests process, personnel, and systems, but, most importantly, it suggests the development of a professional trust architecture, as the GAO has requested, that is now totally absent but which is the only assurance that the IIM beneficiaries will ever get their due.

I have brought copies of that portion of my testimony, if anyone is interested either now or during the question and answer period.

If there is ever an issue which cried out for bipartisan treatment, it is the Indian trust reform effort. Although I worked in Washington for many years, I am not a political expert. I am just a trust lawyer. But I can promise you that the current efforts by Interior will do nothing but buy time until this issue again explodes during the next administration, be it republican or democrat.

I call on Congress, and the executive branch, to stop this political juggernaut. The Secretary of the Interior's veto that emasculated the otherwise very-well-thought-out 1994 legislation simply cannot happen again.

Finally, I'd like to react to two statements that have already been made. I agree with Senator Bingaman when he states that the present DOI has done quite a bit in terms of trust reform. They are the first administration that has tried to take this seriously, and I think they have tried valiantly. They are simply the wrong people to do it. You cannot and you should not try to operate on yourself, and that is exactly what we're asking well-intentioned BIA officials to do—to work on a problem and to solve a problem where they or their friends or their family may have made mistakes. That is neither fair nor reasonable, and in the commercial context would never be countenanced.

The most important thing in trust administration in order to solve a trust problem is to separate and protect the people who have been part of the historic problem. I mean separate in that you do not use them to fix the problem. I mean protect in the sense that they do not lose their jobs, they are not criticized. You use their institutional memory and their knowledge bank and you allow experts who know how to formulate trust system reform to go about and implement that reform with the help of the DOI and the BIA personnel historically involved in this process.

I cannot conclude that there is any other way to do this than to have some kind of independent body.

Respectfully, Senator Murkowski, I think that reform is needed immediately, but allowing the Department of Interior simply to hire consultants I do not believe will work. They have hired consultants before, many, and I have read their reports, and they have resolutely come out and said,

This is the wrong agency to do it. You are ignoring the most important parts of getting this problem done, and they get lost in the bureaucracy of the Department of the Interior.

The three most important things needed to solve this problem are independence, expertise, and the absence of these fatal conflicts of interest. That's what would happen in the commercial context, and I don't believe that the American Indians deserve any less.

Thank you very much.

[Prepared statement of Mr. Gray appears in appendix.]

The CHAIRMAN. Thank you.

It's the feeling of some of the committee that the problem with hiring consultants is they hire consultants that tell them what they want to hear, but if they speak too independently they end up losing their job. That has been one of the big problems here.

Let me ask Mr. Fox first, you sound—there are about 50 tribes that belong to the Intertribal Monitoring Association; is that correct?

Mr. FOX. It's closer to 40, Mr. Chairman.

The CHAIRMAN. Closer to 40?

Mr. FOX. Yes, 40.

The CHAIRMAN. You heard Senator Murkowski talk about moving forward with his bill and my bill to maybe add a section that would turn this management over to the private sector. I think that's the direction to go, too, but, more than likely, the administration would oppose it. That would be my guess. But I wanted to ask your feeling about how the tribes would feel about that.

I've heard, some talk that they worry a little bit that there might be some abandonment of trust responsibility if we did that, but if we framed up a section that had a sunset provision, where it was turned over to a private management company, then, after either a certain amount of time or a certain threshold has been reached, it goes back into Interior, what would be your feeling about that?

Mr. FOX. I think the sunset provision would be helpful, but I already believe that the bill has a lot of positive things that tribes would support in it already, because, number one, there is an umbrella of trust that does follow the private placement and movement of those trust funds from the Federal Government into private placement, so that remains, and many tribes would have assurances there, so that's very positive.

The second positive thing about the bill is—and I think that's why you'll gain a lot of support from tribes, more so than is already there—is, because tribes have the option to keep it with the Federal Government or to move it out, and it is hard to believe that one tribe would want to prohibit another tribe from having that option, even if they wanted to keep their own trust assets with the Federal Government.

So having the sunset provision would obviously be helpful, but I think there already are some really good, positive things in that.

The CHAIRMAN. So if there was an opt-out clause where tribes could either continue having an auditor or having the management done by a private company, or if they wanted to go back under Interior, you think that would be supported by the tribes?

Mr. FOX. Absolutely.

The CHAIRMAN. Mr. Gray, I assume that you believe that the technology and expertise already exist in the private sector to fix this mess.

Mr. GRAY. Actually, Senator, I think that the technological aptitude definitely exists, whether there is an off-the-shelf system that will fix this mess or some—

The CHAIRMAN. Probably not. You probably heard in previous testimony, we were told there may be as many as 100,000 records just totally missing, just not even there.

Mr. GRAY. Right.

The CHAIRMAN. How would a Resolution-Trust-Corporation-like entity go about reforming this system if these records aren't even there?

Mr. GRAY. It's a fairly typical problem, actually, in the commercial context, believe it or not. I mean, banks—I hate to say this, but some very large commercial banks have a tendency to lose records or misplace them or lose the microfilm or whatever. It's not—

The CHAIRMAN. Have you encountered any private sector problems as bad as this?

Mr. GRAY. If you promise not to make me reveal my clients, I will tell you the truth—yes. The problem is this: the problem is that there are always missing records if something goes back more than 15, 20, 30 years, and, in fact, that happens in the commercial sector all the time.

There is a stage in the reformation and the reconstruction of a trust where you have to do some test modeling and you have to use some modeling techniques to recreate, if you will, a semblance of what the historical record was.

In my written testimony, I tried to be very clear that that reconstruction process and that modeling has to be intimately connected with the reformation and the creation of new systems going forward, because you learn so much in that process.

When I said that—when I paused about whether the technology exists, absolutely the ability for the technology to come together exists. The problem with this process and the problem in the commercial sector is that people know they have a problem, they know it is vast, they have missing records, and they go out and they buy a system which the vendor promises will fix all of their woes and they put it into place.

What is missing here and what the GAO has pointed out—and I think absolutely correctly—is first you've got to sit down and think. You can't just buy a software system.

The CHAIRMAN. Yes.

Mr. GRAY. You have got to look at all the variables, chart them all over the room, and conceptually understand what is going on. Then you sit down with systems analysts who may not design the ultimate program, but who can say,

Look, for this one this is going to be the best kind of system. For that one, that is going to be the best kind of system. My job is to make sure that I can program them with the commonsense you just gave me.

Which is just the commonsense of whoever is doing the actual architecture.

Then I have to make sure that those systems speak with each other and that they download properly.

There is a misunderstanding in the Department of the Interior between personnel and systems. They believe that if the systems

are up, everything is fine. That doesn't even happen in the commercial sector.

In the commercial sector, highly-trained trust administrators track, monitor, mimic. They watch these systems like crazy, because they break down. This is not a unique problem.

The CHAIRMAN. Well, it's not here, either. We have a problem with the Interior, at least in my view, that is in a state of denial that they can't fix it, and yet it has been ongoing for years and years, as you know, long before we started these hearings, and doesn't seem to be getting fixed. And it would seem to me one of the first criteria to getting fixed is to admit that you've got a hell of a mess on your hands and recognize that you might not have the capability to be able to do it with your own institution.

Mr. GRAY. Respectfully, I think Mr. Gover has admitted that in every news article I've read. He says it is a mess, you know, but this is a few hundred million dollars down the road. If there was ever a time when you call in the experts—and when I said in my written testimony that I thought, you know, four or five experts covering different areas of trust fix kinds of expertise, whether it is accountants or trust administrators, or whatever—it is a big problem, but a few very good minds working with the right kinds of resources can do a lot more than the \$60 million off-the-shelf system that may or may not accommodate the data.

The CHAIRMAN. Right. I understand. Okay. Thank you.

Senator Murkowski, did you have questions?

Senator MURKOWSKI. It is my understanding that the tribes, Mr. Fox, can go ahead and contract, at their option, outside the BIA for trust services should they wish, and three tribes have chosen to do so.

Mr. FOX. Under the Indian Trust Fund Reform Act of 1994, yes, they can move some placement outside right now, but there is some concerns on that, although some tribes—

Senator MURKOWSKI. What are the concerns on that? I mean, if the Department of the Interior isn't doing an adequate job, why not have the tribes individually go out and contract?

Mr. FOX. I think it is more of a—

Senator MURKOWSKI. Is it because the Department of the Interior does it as a service and it doesn't cost them anything and they'd have to pay for it otherwise?

Mr. FOX. I don't think that's the most important concern that tribes have—and I mean this internally, among tribes, when they make that decision to do that. The concern is the umbrella of trust that we spoke of that exists right now. If something goes wrong, our people—

Senator MURKOWSKI. Something is wrong now.

Mr. FOX. Absolutely. I agree.

Senator MURKOWSKI. And your people aren't getting adequate accounting and there is a distrust as to whether or not the government is providing a fair and detailed and accurate accounting.

Mr. FOX. But do they have a tribal member that is at home on their reservations that is living that doesn't distinguish between the distrust it has of a Federal Government and how they are mis-managing now and to a potential one where there is no Federal

Government protection at all? And that's the concern that tribal members may have.

Senator MURKOWSKI. But maybe a concern is pretty hard to identify, because, you know, the trust responsibility has never been spelled out by either side, for obvious reasons, but it exists, nevertheless.

Mr. FOX. Right.

Senator MURKOWSKI. But this is a fiduciary responsibility, in a sense. It is an accounting procedure. And if the Federal Government isn't giving the tribes adequate accounting, it seems to me that their frustration should be vented in going outside the private sector if, indeed, the Department of Interior is not doing it or is incapable of doing it.

Now, you made a statement in support of a budget request of \$100 million.

Mr. FOX. Yes.

Senator MURKOWSKI. Which I understand is what the Department of the Interior wants to initially put in place its new system.

Mr. FOX. Right.

Senator MURKOWSKI. And we've heard from the GAO and others questioning—and yourself—whether they are the ones to put in a system, whether this should be a function within the BIA or it should be a function that is contracted for.

Now, contrary to the \$100 million, Mr. Gray, what would you say it would take to contract services from the Department of the Interior to a recognized private sector trust service firm who is already set up to, obviously, handle trust accounts, so it would be a matter of transferring data?

Mr. GRAY. I think I can answer that, if you would bear with me a second. I want to see if I can differentiate two things here that maybe I don't understand.

There are two themes that run through this. First is the IIM accounts—the individual Indian money accounts. Second, are the tribal accounts.

Senator MURKOWSKI. Yes.

Mr. GRAY. And I may be wrong about this, but I believe that the option that tribes have to either leave money in or take money out is really a subset of the issues of the tribal accounts, and there has been a rather expensive reconciliation that has come up short. It isn't perfect, but there is a reconciliation.

I was addressing the individual Indian money account issue, which is what the appropriation is for. To my knowledge, that's what the TAAMS system is all about and that's where all of this money is going to be spent, and there is no option yet for individual Indian money account people to take it out and give the reform effort to a trust department.

So I think—I may be wrong about that, but I think there is a distinction.

Senator MURKOWSKI. So your talking about tribal vis-a-vis the individual?

Mr. GRAY. The tribal.

Senator MURKOWSKI. I understand that.

Mr. GRAY. The tribal is—there has been a reconciliation that cost a lot of money. It's not perfect. It is \$2.5 billion short. But that at

least they have some reconciled funds that they can take out and then have managed somewhere else.

In the IIM accounts, it is a very different situation. It is a totally—you know, these trust management assets haven't been managed well for——

Senator MURKOWSKI. So what you're saying is the individual accounts are a mess because you don't know whether——

Mr. GRAY. Yes.

Senator MURKOWSKI.[continuing]. They are living or dying and——

Mr. GRAY. Yes; and they go back a long way. You're talking about oil and gas rights to the 1930's, and that is tough stuff.

Senator MURKOWSKI. Okay.

Mr. GRAY. But let me answer your question on the IIM, because I can't answer what could happen on the tribal side.

What I would recommend and what I'd recommend to a commercial institution which came to me on this and said,

Look, we're headed for litigation. Our beneficiaries are going to sue us, for sure. We want to do the right thing. We don't want to spend a zillion dollars. What do we do?

I would create an independent entity which is very, very tight and very sparse and I would have them hire a team of three or four experts who have worked together before, whether it is an accounting—they usually come from an accounting firm or——

Senator MURKOWSKI. We're getting close, though, to some of the consultants that we have in our legislation and you were somewhat sensitive to, and now you're kind of drifting back to that.

Mr. GRAY. Well, my point about consultants was who hires the consultants. If the consultants are hired by the Department of the Interior, it doesn't matter what they say, because it gets lost in the maze, it gets quoted, or it doesn't get quoted.

Senator MURKOWSKI. Go ahead and tell us how much this is going to cost us with the private sector.

Mr. GRAY. I think you could put together that team and you could give them a—these are ball park figures—I think you could give them a 15- or 16-month window and say, "We want you to put together a conceptual and systems architecture that is totally interactive—" which is what the GAO is talking about. What they are saying is there are so many different parts of this business cycle—land leasing, individual trust accounting—and they all have to interact with each other. Do this conceptually and, indeed, put together systems requirements that then can be facilitated over time. I think you could do that with, you know, \$10 to \$15 million in maybe 12 to 15 months. I mean, it is intensive effort. People have to roll up their sleeves and work very, very hard, but at least you've got—if you hire the right people, you've got——

Senator MURKOWSKI. In your opinion, in the private sector, who do you feel—give us a couple of names of firms that you would feel confident——

Mr. GRAY. I will. One of them—and this one is already engaged and may or may not be appropriate, but we have worked with them. When a large bank has a problem like this, they go out and assemble a team. The team usually consists of an accounting trust expert from one of the large accounting houses.

Senator MURKOWSKI. Yes.

Mr. GRAY. Price Waterhouse.

Senator MURKOWSKI. Right.

Mr. GRAY. Arthur Andersen.

Senator MURKOWSKI. Right.

Mr. GRAY. Deloitte and Touche, Ernst and Young.

They then will hire lawyers who know the law, know the trust law, usually one or two—people who have expertise in this. And they are usually in New York or on the west coast.

The third element, which is really the important one, is a systems analyst that has worked in trust for a long time. Those are the people who can think in computerese, while at the same time listening to people who don't talk in computerese and understand what's going on. Those are the harder people to find, but they are available.

The fourth element that I would put in there is a professional trust administrator or manager. I'd go to a U.S. Trust or Chase Bank or, you know, one of the—

Senator MURKOWSKI. Bankers Trust, any of them.

Mr. GRAY. Any of them.

Senator MURKOWSKI. They're all set up, and they do volumes of business much in excess of what we're talking.

Mr. GRAY. And they know these systems. They know these systems.

Senator MURKOWSKI. Know the systems, they have a reputation at stake. Now, we've already seen the reputation of the Department of the Interior and its inability to address its responsibility to the tribes. That reputation is already tarnished. What I fail to understand—and I don't have the same sensitivity that the tribes do—that they're giving up a trust, if you will, by contracting this out. This doesn't dissuade the obligation of the Department of the Interior in its trust to the native people. This is a function, a mechanical function of service.

Mr. GRAY. I think that's right.

Senator MURKOWSKI. And it shouldn't be in the Department of the Interior. They're not set up. The BIA is not set up. They don't have that management expertise. It should be contracted out to a firm that clearly has the capability and stands to lose substantially if they mess it up, so to speak, because their reputation would be tarnished and they'd simply lose business.

Mr. GRAY. This is not a risk-free business for professionals who do it.

Senator MURKOWSKI. No; they're sued all the time. But, by the same token, they have expertise and capabilities to ensure that they minimize that risk.

But you've substantiated my own evaluation of what ultimately has to be done here. I just don't think it is an appropriate function for the BIA to do. I think it should be contracted out.

Thank you.

The CHAIRMAN. Well, I concur with Chairman Murkowski. I'm not sure if I understood you right, but we are being asked to provide \$100 million in the House version this year and \$87 million in the Senate version, and it is pretty obvious to me that it can be

done a lot cheaper in the private sector with people that know what they're doing, very simply.

So I appreciate all of the witnesses for appearing this morning and do apologize. We've got a conference that we have to go to, so with that I will tell you that this record will remain open for 15 days. If you have any additional information you'd like to provide for the committee, we'd certainly then include it in the record.

Thank you. This committee is adjourned.

[Whereupon, at 10:30 a.m., the committees were adjourned, to reconvene at the call of their respective Chairs.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Today, we gather to discuss a problem that hits close to home in Montana. That's the management of the Tribal Trust Funds by the Office of Special Trustee. This is the second hearing we've had this year about this topic, with the first hearing coming soon after the resignation of Mr. Paul Homan. We had a lot of discussions then about this fancy new system being installed in Billings, with a lot of promises about how great this system would be. As we sit here today, we're still getting promises, but we aren't getting results.

The Department of the Interior is still unable to produce Tribal Trust records. The lawsuit against them is still ongoing. The computer system in Billings is still unproven. Many tribal members are still unable to access their trust accounts. The GAO is still unable to endorse the new system. The only thing that has changed is that Congress has added millions over last year's trust fund budget. We're skeptical of the benefits, but we're willing to give Interior the near term benefit of the doubt.

We need to understand what specifically will be done with these funds. What progress is being made. What our next steps will be. Let's put it down on paper and get on with it and make some real progress on this issue. We have thousands of people who can't get a valid bank statement from a government-run trust fund. That's not acceptable. These people have put their faith in a government treaty, and we need to live up to that trust. We owe it to them. I owe it to my Montana tribal population.

I offer my thanks to GAO for being here today to discuss July 14, 1999 their report, and I look forward to hearing some of the answers to these questions today.

PREPARED STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Mr. Chairman, I am very interested in a brief summary of the universe of unreconciled tribal trust accounts.

According to BIA Assistant Secretary Kevin Gover, Arthur Anderson LLP was hired by the Interior Department in 1990 to undertake the Tribal Trust Fund Reconciliation Project. Arthur Anderson LLP was able to reconstruct \$15.3 billion in non-investment transactions—about 86 percent—of the total \$17.7 billion. This leads to the infamous unreconciled amount of \$2.4 billion that has been well reported in the press.

I realize that the 300,000 Individual Indian Money (IIM) accounts worth about \$500 million is a more complicated and potentially more difficult matter to resolve. This is due to the fractionated land ownership over generations of inherited lands and resources often resulting in individual account values below a single dollar.

With regard to the tribal trust accounts—those generated by timber, oil, gas, minerals, and other natural resources sold on the market for the benefit of tribes—the

specter of \$2.4 billion missing, lost, unreconciled, or however one wishes to characterize the total lack of professionalism in handling these accounts, is a black mark on our U.S. Government.

Not only do we not know what we owe these tribes for their resources, we have been told that the Treasury Department shredded all records prior to 1972. This is for a program that goes back into the late 1800's.

I want to understand how the U.S. Government intends to resolve the issue of paying what we owe to individual Indians and tribes. I would like some basic explanation of the true magnitude of the problem. Is it merely a matter of missing verification of available records? Do the tribes have information that is incomplete? How do we plan to reconstruct these accounts and then make settlements with the tribes?

How do we know that tribal trust account unreconcilable deficit is \$2.4 billion? Is it more? What level of confidence do we have that \$2.4 billion is a good estimate of the remaining unreconciled accounts?

Is it true that of the \$2.4 billion in unreconciled accounts, about \$800 million is actually missing in terms of poor record keeping, while about \$1.6 billion can be accounted for at least partially by tribal and other BIA Trust Account records?

Will the Department of the Interior or whatever agent we choose to resolve these back debts have to guesstimate the amounts owed by using economic models to develop comparables for timber or oil prices in 1910, 1935, 1945, 1950, and so on. .

Are there sufficient tribal and BIA records available to help reconstruct the true magnitude of the value of resources supposedly managed by BIA for the benefit of these tribes?

In short, while today's hearing is focused on the known shortcomings of the Department of the Interior's efforts to establish a working system of trust management like any good bank could offer its clients, I would be thrilled if we could say that a private sector type approach to trust accounts would be sufficient.

Even if we could have some confidence that every tribal and every individual account could be somehow miraculously managed 100 percent accuracy, I still believe we have a huge problem in trying to find a way to make fair settlements for accounts that the tribes already know could take decades to resolve.

Prior to 1972, the date picked by the BIA to go forward to reconcile these trust accounts, there were huge timber, oil, gas, coal, and other transactions that are likely to have been in poor condition to the detriment of the tribes. How will these accounts be reconstructed?

The Navajo Nation lawsuit of \$600 million against Peabody Coal is a current reminder of poor management of tribal resources by the BIA, the Mineral Management Service, the BLM, and other U.S. Government agencies.

How many more multimillion dollar lawsuits are there in the wings? Has anyone at GAO or Interior made any estimates of the true magnitude of this trust account problem for tribes?

Even if the proposed computers solve all the records problems dating back to 1972, how can we be reassured that the valuation of timber, coal, gas, and oil has been fair and honest? In other words, a working system can easily continue to pay royalties for resources that are below their true market value. Who will be in charge of assuring that these figures are current, accurate, and fair?

As the old saying goes, "garbage in, garbage out". What steps is Interior taking to make sure that the value of Indian resources is being done on a fair and consistent basis?

PREPARED STATEMENT OF HON. CRAIG THOMAS, U.S. SENATOR FROM WYOMING

Thank you Mr. Chairman. I'll keep my statement brief so that we can get to our witnesses this morning.

Seven years ago, when I was serving in the House as the ranking member of the Subcommittee on Native American Affairs, I helped write the legislation calling for the overhaul of the trust fund system. In the years since then, as a member of the Senate Indian Affairs Committee, I, have attended more hearings on the trust fund issue than any other single subject. And still, 7 years later, after false starts, neglect and stonewalling on the part of the Department all the way up to the office of the secretary, wrangling over procedures, and several audits, we are effectively no closer to a solution than we were in 1992.

I hope that both of the committees will keep up the pressure on the Department, and that we can get this problem resolved before another 7 years passes by.

PREPARED STATEMENT OF DONALD T. GRAY, LILLICK AND CHARLES, LLP, SAN FRANCISCO, CA

My name is Donald Gray. I am a partner with the law firm of Lillick and Charles LLP in San Francisco. For more than 25 years, I have specialized in matters concerning commercial trust and institutional fiduciaries. I appreciate the opportunity to testify before you, and to bring what I hope is a helpful and fresh perspective to the Indian Trust Fund reform effort.

For many years, my practice—and the practice of Lillick's Trust Group—has centered on working with institutional trustees and other professionals in establishing, administering, reconciling and rehabilitating long-term complex trusts. My work has given me extensive exposure to active asset management, trust administration and operations, investment, complex cash-flow and risk control problems of trusts involving billions of dollars of managed assets of every variety. Our Trust Group, which I lead, has represented some of the nation's largest financial institutions in these matters. One example of our work is our recent representation of a major money-center bank concerning trust funds of over 1,000 governmental agencies, and hundreds of millions of dollars of claims relating to unclaimed trust moneys, record-keeping, investment and fees dating back many years. Our Group includes Jeffrey Bucher, a former Governor of the Federal Reserve, who has accompanied me here today. Mr. Bucher's experience includes responsibilities for major trust functions in government and the private sector. Simply put, our business is largely devoted to "fixing" broken trusts.

Although my experience is predominately in the commercial sphere, I have also been involved in trusts that touch both the public and private sectors. For example, in the mid-1980's, I authored the series of master and subsidiary trust agreements implementing the settlement between the United States Department of Commerce and the Native American corporations representing the Pribilof Islands of Alaska. Those trusts helped form the basis of the Islands' new economy, as it emerged from more than a century of U.S. Government oversight.

I was pleased to accept Chairman Campbell's invitation to testify on the General Accounting Office (GAO) report on trust funds management within the Department of the Interior (DOI). I believe I bring a perspective which, except for the significant efforts of Mr. Homan during his tenure as Special Trustee, seems to be completely lacking in the current process. That is, the perspective of an independent person or group with significant private sector trust and financial institutions expertise. The key concepts here, and throughout my comments are "independence" and "expertise."

The problems facing Indian Trust Fund reform are admittedly multi-faceted. Understandably, there are micro-economic, institutional, political, cultural and emotional concerns involving the DOI and the American Indian people, which have and will continue to manifest themselves throughout the process. I am not an expert on Indian affairs, nor on the intricate workings of the governmental agencies with responsibilities in these areas. I am a trust lawyer. But after significant research, I have reached the inescapable conclusion that the Indian Trust Fund reform effort cries out for the kind of detached, independent expertise that exists among professional trust administrators, accountants, lawyers and other professionals in the private sector. These are persons who have spent most of their careers dealing with trust problems comparable to those addressed in the GAO report.

I reach this conclusion because the Indian Trust Fund problems are, first and foremost, financial trust problems based on issues frequently encountered by private sector trust institutions, such as inadequate policies and procedures and poorly planned systems conversions resulting in ineffective recordkeeping. It appears to me that, if the Indian Trust Fund problems are to be effectively dealt with, the resolution process needs to be removed from the vestiges of 150 years of U.S. Government/American Indian relations, with solutions fashioned primarily through the prism of historic structures and viewpoints. In my view, effective reforms will never be accomplished until the fiduciary and financial reporting aspects of Indian Trust Fund management is separated from the DOI's other role in overseeing the social and economic development and political concerns inherent in the U.S. Government/American Indian relationship. These latter concerns, which are an important aspect of DOI's mission, and the persons responsible for such matters, must, in my opinion, be separated completely from the management of the Indian Trust Funds with the latter function placed in the hands of persons with commercial and financial trust expertise who can identify and implement the systems and resources essential to real trust reform. I am convinced that without such independence and expertise, the affected American Indian people will be deprived of the same high level of money and asset-management services, as well as legal protections, that are available to

every citizen of the United States, who puts his or her financial affairs in the hands of another.

The GAO extensively studied one aspect of the DOI's High Level Implementation Plan [HLP]—the planning and acquisition of a new trust asset and accounting management system [TAAMS]. The GAO concluded that the DOI had not developed an overall information systems architecture for the entire business cycle of the trust funds functions—including land ownership and appraisal, utilization and income management, trust fund accounting, investment, custody and records control, and disbursements. Without this architecture, there can be no assurances that isolated systems purportedly providing one function will interact and interconnect properly with systems developed for all other important trust functions. The GAO also found that the DOI, by purchasing the TAAMS off-the-shelf software, had not done enough to assure that all aspects of asset management data [involving complex oil and gas, timber, crop, fishing and other asset pricing, leasing and money flow information] would be accommodated.

The DOI is acquiring TAAMS, at a reported cost of \$60 million, without regard to the GAO's warnings of the need for overall information systems architecture in correspondence with the DOI in 1997 concerning the Special Trustee's Strategic Plan issued in compliance with the American Indian Trust Fund Management Trust Reform Act of 1994 ["1994 Act"], and in its general guidelines on systems architecture development issued in 1992. The DOI also seemed to ignore the highly integrated approach for trust fund clean-up, rehabilitation and implementation recommended by the Special Trustee in his April 1997 Strategic Plan issued in compliance with the 1994 Act. Similarly, the DOI appears to have overlooked the specific directives of that statute [the governing document for all trust reform] to accomplish all aspects of reform in an integrated, coordinated and properly interactive process. The DOI also seems not to have heeded the advice of Macro International Inc., consultants to the Office of Special Trustee [OST], which found in 1997, after significant research into the personnel and training deficiencies of DOI's reform effort, that any implementation of a technologies infrastructure to solve the manifold trust problems first required the foundation of well thought-out practices and procedures relating to overall integrated reforms that would assure a comprehensive output consistent with commercial standards. In other words, without accurate data collection and input, no software system, even the most sophisticated, can achieve the required objective of providing accurate financial reporting.

As an outside trust expert, I must question why the DOI staff would apparently ignore the GAO, a highly qualified finance expert, former Special Trustee Homan, outside consultants, and finally, the governing statute, by purchasing an off-the-shelf system, at enormous expense, without any clear assurance that it will be integratable with other key aspects of trust reform, or even that it will be able to process all data variables inherent in the vast array of Indian Trust Fund assets. One theory is that such an extraordinary action is a symptom of a larger problem. The symptom, which I have seen in the commercial context, is the almost frantic attempt, when existing procedures fail, to grasp for a quick fix, even if the fix merely creates the appearance of a solution.

I am aware of the DOI's recent "test" of the TAAMS system. But that test was based on static, and I would guess highly selective data. As explained below, any asset management system must be extremely agile and have the ability for constant modification to accommodate all the data variables inherent in the JIM assets. Further, this recent test says nothing about the compatibility of the system with other systems, or its consistency with an overall architecture, which does not yet exist.

The larger, and much more fundamental problem, is that the DOI and its internal Bureaus are encumbered by serious conflicts-of-interest, although not of their own making. It is highly probable that such extreme conflicts-of-interest will inevitably drive the DOI, its captive OST, and the Bureau of Indian Affairs [BIA] to actions that are not directed solely at rehabilitating and correcting accounting for all trust assets properly creditable to the Individual Indian Moneys [IIM] accounts, the only true goal of the 1994 Act. The very essence of trustee status and integrity, and of fiduciary responsibility, is the absence of conflict-of-interest.

If I may be permitted a small digression, I suspect that some of the committee members may be a bit confused with the overly technical jargon used by the DOI, the GAO and, admittedly, trust professionals like me. It may be helpful to decipher what "systems architecture" means, at least to me.

When professional trust experts approach the original set-up or historic reconciliation of a complex income asset/money flow/investment trust, they first start with a comprehensive listing of all possible data input, incorporated into a conceptual diagram of how that data must flow through each and every phase of the trust accounting system [appraisal, leasing, accounts receivable, accounts payable, any spe-

cial cash-flow allocations like reserves, posting to proper accounts, investment accounting, account ownership records and disbursements). In addition, assessments are made of the personnel expertise needed to keep track of, analyze and control all such information. Finally, there is a narrative conceptualization of how information/technology [i.e., computer] systems can facilitate the above processes as well as an identification of so-called "inflection points," where one technical system's data is downloaded to people for analysis and re-uploaded to other systems, or where two technical systems can and should interface to transmit critical data. *This process must be substantially complete before any one automated system is specified or purchased.*

Put another way, seasoned trust professionals in the commercial context first apply simple common sense to the problem. This sounds obvious and easy, but it is far from it. In a trust rehabilitation context, this foundational process involves what we call in the industry "scrubbing." That is, the architects of a workable system must roll up their sleeves, review thousands of potential data input variations [past and future], conceptually design how trust data flows through a multi-phase system, perform calculations on trust data and explain what people should do, and what computer hardware and software should do, to implement the system.

This is some of the hardest work in professional trust management and requires expertise in all facets of commercial trust accounting and, typically, legal interpretation of trust instruments and governing laws. First and foremost, administrators must resist the sometimes inexorable urge to look at computer systems as panaceas for any complex problem. Computer systems do not think. Hopefully, they are designed by people who do think, and who are intimately familiar with processes and calculations which are being automated. They gain this knowledge by working intimately with such a multi-disciplinary trust team for countless hours. After flow charting the desired processes or calculations, they write or procure a software program [or package of programs] embodying them. If the software is designed and programmed well, a computer system can then perform such processes and calculations in bulk and at great speed.

Also, computer systems do not self-correct and expand themselves to create new capabilities for handling information/data with which they were not designed to cope. I have seen highly sophisticated trust and asset management commercial systems that do a splendid job with 90 percent of complex data or analysis, but utterly fail to accommodate, or be modified to accommodate, 10 percent of the required data or analysis. Unfortunately, 90 percent correctness for millions or billions of dollars of managed assets does not sit well with investors and other beneficiaries. Although seemingly reasonable to the lay person, Secretary Babbitt's recent comments concerning the selection of a 'near enough' off-the-shelf asset management system, by selecting a system developed not for the IIM trust reform, but for an "analog" problem, is a bit frightening to a trust professional.

As the GAO report indicates, instead of the "intricate and complex coordination process" of all facets of the reform effort called for by the former Special Trustee in his Strategic Plan, the DOI's HLP leaves the IIM effort with a disjointed, potentially non-integratable mish mash of project initiatives, and the occasional "big splash" computer system for one element of the task that may work only for highly selective data. But the current trust reform effort, as evidenced by the DOI's HLP, contains features far more troublesome than a potential functionally deficient, or non-integratable TAAMS product.

Although both the HLP and the Special Trustee's Strategic Plan admittedly contain similar, and undeniably necessary, tasks essential to account clean-up, reform and new systems building [including data clean-up, records retention and proper custody, workable trust accounting and asset management procedures, investment, accounts and land title, appraisal and probate clean-up], these are no more than static descriptions of jobs to be performed on a coordinated basis. What is of ultimate importance is the philosophy, mission goal and the resulting and overriding "how" to attack all these deficient areas. Respectfully, while the Secretary plucked out independent projects that are undeniably important to trust reform, he specifically and dramatically gutted the Special Trustee's Strategic Plan of its two essential cornerstones for such an overriding mission and goal—*independence and expertise*. Without these elements, which create both a reform environment and give it its essential tools, meaningful trust reform will not occur.

The Special Trustee's Strategic Plan, in its first two pages, could not have been clearer on this all-important "how." First, with some courage, Mr. Homan called for a completely independent and neutral body, a Government Sponsored Enterprise [GSE], to take over the trust rehabilitation process, under the supervision of government agencies expert in commercial finance and modest trust procedures. He continually cites the ongoing conflict within the DOI in failing to separate its special trust

reform fiduciary goals from its general responsibilities in education, housing, law enforcement and a multitude of other welfare programs and other American Indian services provided by the DOI and its Bureaus. In short, Mr. Homan concluded that, in the competition for the limited funds appropriated to DOI, when a choice must be made between a department's general responsibilities and trust fund reform, the latter program would inevitably suffer.

What is also obvious from the HLP's allocation of responsibility for its 13-category, piecemeal approach to reform, is that there is at least an unconscious attempt to employ the other internal Bureaus of the DOI, especially the BIA, in these processes, regardless of a proven lack of expertise, since only two of the projects are reserved to the OST. This foreshadows two very negative results. First, it displays a lack of appreciation for the expertise, and long-term training required for trust rehabilitation and administration, and suggests that involving these internal DOI Bureaus is of greater importance than solving the trust fund problems. The DOI's loyalty to one of its Bureaus, the BIA, is laudable, but completely inappropriate in the IIM trust reform process. Second, the misguided piecemeal methodology of the HLP permits agency employees, no matter how much they may wish to act in good faith, to attempt to solve the trust fund problems by purchasing an expensive new software system, creating the impression that by doing they are attempting to obscure past mistakes with an easy, but ineffective fix. This is not intended to be an indictment of such personnel, it is simply a recognition that human beings, no matter how fair-minded and well-intentioned, should never be asked single-handedly, in isolation and without expert advice to rehabilitate a process which has gone seriously awry during their historic involvement in the process. Not to put too fine a point on it, but does anyone in this room want to be solely responsible for campaign finance reform?

For a commercial trust practitioner, deeply involved in the activities of bank trust departments, and a veteran of dealing with the Office of the Comptroller of the Currency [OCC], and other Federal agencies, state banking authorities, accountants and rating agencies in connection with audits of trust and fiscal agency procedures, the equally apparent inability of the DOI staff to appreciate the level of expertise required for the rehabilitation and modernization of a trust problem as vast as the IIM accounts issues is surprising to me. I cannot put this any more clearly than former Special Trustee Homan did in his Strategic Plan, and I fully concur with his conclusions. Regarding the lack of trust managerial resources within the DOI, and the BIA specifically, Mr. Homan states:

Managers and staff of the BIA have virtually no effective knowledge or practical experience with the type of trust management policies, procedures, systems and best practices which are so effective, efficient and prevalent in private sector trust departments and companies. The BIA area and field office managers do not have the background, the training, the experience, the financial and trust qualifications and skills, necessary to manage the Federal Government's trust management activities according to the exacting fiduciary standards required in today's modern trust environment. Thus, and through no fault of their own, and even assuming financial resources were made available, they are not capable of managing effectively the Federal Government's trust management activities on a par with that provided by private sector institutions to their customers. [emphasis added]

If your or my bank or trust company were to handle our assets with completely unqualified personnel, in a manner that can be described metaphorically as a "shoe box" approach to accounting, we would be in court, or at the steps of the OCC or other appropriate regulator the next morning. That was one of the great lessons of the financial institution crises of the last decade.

The independent contractors, Macro International Inc., Larson Slade Associates, LLC and Arrowhead Technologies, in cooperation with project resource firms (such as Riggs Bank, NationsBank and State Street Bank and Trust) echoed Mr. Homan's conclusions after hundreds of DOI personnel interviews. Their goal was, in part, to identify any gaps between the current Indian trust systems and trust departments in the commercial sector. These consultants concluded in 1997 that the accepted legal and procedural standards of fiduciary responsibility to manage trust assets and accurately report on their status to beneficiaries were not being met. Without properly trained personnel, and without a "single-point management responsibility" like a GSE, the current system falls far short of commercial trust standards. What is needed, these consultants found, is a single trust organization, with complete control over both resource and financial assets utilizing tried and true commercial applications. Finally, they concluded that all of these tasks will fail to improve the Indian Trust Fund reform process unless an effective and efficient staff is able to carry out the tasks.

A quick look at the HLP budget demonstrates with clarity the Secretary's opinion of these expert findings. Although these numbers have since been inflated, the HLP, for combined fiscal years 1999 and 2000, called for a budget for computer software "systems" of \$51.1 million. For the same years, his budget for "training" is a meager \$7 million, and even that relates solely to on-the-job training for BIA officials (which the consultants found generally ineffective) rather than for the hiring of experienced commercial trust administrative staff. So much for expertise.

With the growing complexity of investment vehicles, asset-backed securitizations and their correspondingly complex cash-flows (not unlike the IIM accounts), modern trust administration requires a level of financial and technical expertise that was unheard of twenty years ago. What once required a few accounting courses and on-the-job bond payment training, now frequently requires advanced degrees in money management, fiduciary standards and laws, complex cash-flow analysis techniques (called "analytics" or "modeling"), dexterity on PC-based spreadsheet and data base systems, a complete understanding of permitted investments, overnight "float" investments, special cash accounting systems and the use of complex computer programs. Even with this training, and with the constant support of expert supervisors, tax specialists, accountants and attorneys, it takes years to develop the intuitive expertise to perform proper trust accounting. To my knowledge, not one person from the commercial sector with such a background is presently on the staff of the DOI.

Again, I must ask why the Secretary of the Interior has completely ignored the critical need for such independence (i.e., lack of conflicts-of-interest) and expertise. One might guess that his answer would be the very "special" nature of U.S. Government/American Indian relations, and the ultra-sensitivity the BIA and the other DOI Bureaus bring to this special problem. But from the outside this rather looks more than suspiciously like institutional self-perpetuation, obfuscation of past mistakes, and at worst, the kind of paternalism that should have gone with the wind many years ago.

How would a team of commercial trust experts approach a problem like IIM reform, and how does the DOI's course of action compare to such a commercial approach?

Although admittedly a long time in the making, commercial trust entities have tackled efforts just as daunting as the JIM problem, especially when they have inherited active asset trusts which have been mismanaged.

An overview of a typical step-by-step approach to a major "fiduciary fix" of a private sector trust organization follows:

Step 1. Assemble a Team.

The first step is to assemble a team consisting of highly experienced trust professionals, accountants who specialize in detail analysis of trust accounts, cash-flows, investments and control procedures, legal experts knowledgeable about the governing law, documents and the practical general industry practices, and computer systems analysts, specifically trained to translate conceptual architecture developed by the other team members into software systems requirements. We are not talking about hundreds or even dozens of people. Although they may, all require expert staff assistance, at the core, we are talking about four to six trained professionals. I and my colleagues in the industry have worked successfully with many such teams.

Step 2. Assure the Project Team's Independence.

The next step is to establish the absolute independence of the project team. As I have mentioned to many interested people on the Hill during the past several months, establishing independence for the team responsible for either fixing a broken trust, or creating an entirely new trust system for a complex array of assets, money flows and beneficiary variables, is essential. That team would initially meet with personnel historically involved in the trust, or trust asset process. Those people will be separated and protected in the trust fix process. By this I mean that there will be the immediate recognition that those involved in a historic process where mistakes have been made, whether or not they personally have made them, are exactly the wrong people, at least at the initial phases, to be actively engaged in rehabilitation or designing replacement systems. The natural urge of all of us is to mitigate, gloss over and in extreme cases, hide past mistakes, and that urge can frequently take precedence over sound reform efforts. And yet these people, in this case DOI personnel, must be protected. Their institutional historic knowledge of problems, where data is to be found, what external pressures have been brought to bear at the expense of proper functioning, and a multitude of other essential information, resides in the memories of these people. If they are told that they will not be fired or otherwise punished for human errors and mistakes (short of criminal self-dealing, which I doubt is a serious concern here), they can be of tremendous help. But if they are left alone to fashion all reforms, they are being required to do the impossible—

protect themselves and their families while being asked to single-mindedly protect the interest of IIM beneficiaries. Again, all efforts, at all levels, must be employed to eliminate such fatal conflicts-of-interest.

Step 3. Establish Document Custody and Control.

The next step of the team is to establish the strictest document custody and security measures possible. Every piece of historic data that is contaminated or disappears diminishes the integrity of any reconstruction effort, and eliminates data variables, and potential problems that may likely recur, and therefore should be collected, solved and input into a system that can accommodate all data variables and similar problems in the future. Recent reports by the Department of Justice and the Special Master in the class action litigation regarding BIA document destruction and general substandard condition of trust record maintenance make this step an obvious priority.

Step 4. Identify Data Elements.

Next, the data elements relevant to all phases of the trust business cycle must be identified, whether relating to land records/ownership, asset management or trust accounting functions of proper crediting, investment and disbursement. Further, an analysis of how that data has, and may change over time is critical. Systems, especially automated systems, do not usually adapt well to data changes. Significant experience, knowledge and creativity in the ever-changing nature of land resource exploitation, investment parameters and ownership variables are required at this stage.

Step 5. Develop a Schematic Diagram.

Then comes the hardest part, the development of a narrative, logical but highly complex non-automated schematic diagram (which could cover the walls of this hearing room), demonstrating how all collected data must move, interface, inter-relate and be re-analyzed, recalculated and otherwise re-assessed to assure that all functions of a highly integrated lease-to-beneficiary disbursement system will, at least conceptually, work. For lack of a better term, this is the conceptual model, or overall architecture of any complex trust problem. In the end, if an experienced commercial trust administrator, with the aid of only an HP or a simple PC-based spreadsheet system, cannot track financial data from lease billing to beneficiary disbursement, throughout all the intervening trust business functions, then all the elaborate personnel task forces and isolated pieces of systems software, no matter how sophisticated, will be worthless. All the functional elements of the business cycle must be analyzed simultaneously and interactively at this conceptual architecture phase, or hundreds of millions of dollars in "magical fix" systems will be purchased, and ultimately wasted.

Step 6. Design Architecture.

Next, experienced trust systems analysts, capable of fully comprehending the conceptual architecture, and fully knowledgeable about the universe of commercial off-the-shelf [COTS] trust accounting systems and custom applications providers, can begin to design an interactive systems architecture to accommodate all functions. This does not mean such an expert independently develops separate, or fully integrated software components. What is done emphatically mean is that one person, or a group of extraordinary trained people, is fully cognizant of both the overall goals and the intricate conceptual plan based on actual data and the universe of automated solutions that might be brought to bear to facilitate the conceptual design. Then, and only then, are requirements developed, and systems pre-tested and finally purchased, and then only with extensive warranties, retrofitting and modification undertakings and extensive service, support and back-up packages.

Step 7. Recruit Permanent Trust Administration Staff.

Automated systems are only as good as data input performed by skilled trust administrators. Further, if multiple automated systems are used, such administrators must constantly monitor whether the systems are correctly interfacing and exchanging information, since this is an area of frequent difficulty given the ever-expanding universe of data variables and money calculations which flow through those systems. This requires knowledge of the basic functions these systems perform. Data variables, and sometimes simple automated systems breakdowns (or "crashes"), or failures due to viruses, require trust administrators to constantly test the validity of systems calculations, usually by "shadow" calculations mimicking the essential tasks of any automated systems, performed on single stand-alone spreadsheet PC systems. This is painstaking work, and requires significant experience.

I have read the Special Trustee's Strategic Plan, the HLP, the subject GAO report and countless preceding GAO reports, hundreds of pages of court transcripts and Congressional testimony, outside consultants reports, and press releases and studies of the DOI and its internal Bureaus. And yet, I am far from an expert on all IIM reforms to date. However, I respectfully ask the DOI, the former Special Trustee,

the Advisory Board established by the 1994 Act, the members of these two Committees, and the enormously diligent staff leaders of the oversight Committees and the Senate Appropriations Committee—what kind of a report card would you give to the DOI during the past few years based upon the above model of a well thought-out, rehabilitation approach?

The following hypothetical, admittedly from a different but similar context, may help to put the current state of affairs in perspective. After growing up through the New York City public school system in the 1950's and 1960's, this hypothetical has meaning to me, and hopefully to others present.

Suppose a blue-ribbon group of local merchants, professionals and workers in an inner-city environment decided to establish a multi-faceted urban redevelopment project, aimed at dramatically improving the lives of the low income majority living in the area. The group engages the help of health professionals to setup clinics, educational professionals to establish remedial programs and vocational education to augment a perpetually underfunded public school system, artists and musicians to establish creative centers as counters to drugs and crime and off-duty police to assure an atmosphere of security rather than fear. Assume the group also sets out to develop an investment and asset management program to help the populace invest their hard-earned savings, budget their household funds to maximize the best life style, and to manage income-producing property that belongs to individuals or civic associations. Suppose this group over time, through successes, attracted local, State, Federal, and private nonprofit funding to facilitate its programs.

Now, assume five solid years of demonstrable success. The streets are safer, drug use among the young is down, educational achievement and job retention is higher, and health benefits have reached homes never reached before. But also assume that the organizing group, simply due to lack of time and resources, neglected the asset management and investment functions with respect to potentially millions of dollars of poor people's money. Records were literally kept in shoe boxes, or lost, pending the engagement of financial professionals, or deposits in regulated financial institutions, that the group always intended to do, or to make, but simply failed to do given the enormity of the task it had undertaken. The result is millions of dollars of unrecoverable losses for citizens, and no adequate program in-place to manage the assets or invest the money, assuming the group even knows or can locate current balances.

As a citizen, or a State regulator, what would you do? Would you, out of anger and frustration, seek to punish the individuals who had formed the redevelopment project, or end the project itself? I doubt it. But would any sane person, in their wildest dreams, allow the control persons, who are now heavily conflicted and who lack any financial expertise, to continue to manage the assets and money out of the shoe boxes, and to spend fabulous amounts of other people's money to buy computer systems, with grand but empty promises to solve all problems? I do not believe so. Any responsible person would take what money they could find and deposit it in a bank, and transfer what assets they could find to a bank trust department. Then, under proper regulatory guidance, true experts would be employed to reconstruct proper balances, probably on a modeled test case basis given the paucity of records, and true reform would begin.

Why should the American Indian beneficiaries of the IIM accounts be treated with any less reasonableness and fairness?

The leaders of the DOI and the BIA, and the rank and file of those entities in Washington and in the field, no matter how well-intentioned, are seriously conflicted in the process of Indian Trust Fund Reform. If fiduciary integrity means anything, it means the absence of such the conflicts-of-interest posed by concerns of job security, political survival, institutional longevity and self-protection against blame for historic errors. People of good faith can argue about the meaning of the prudent investor rule, or other high fiduciary standards of care. But after a professional lifetime of attempting to reconcile textbook standards of care for trustees with real work capabilities of human beings like you and me, I (along with many courts, bank regulators and the Federal Securities Acts) have concluded that professional fiduciaries must, at the very minimum, be trained in state-of-the-art money management, completely free from conflicts-of-interest, and must treat the assets of others in their care as though they were the personal assets of the trustee, his or her spouse, and children. When the Secretary of the Interior chose to backbumer Mr. Homan's concerns about trust standards of care, along with the Special Trustee's concerns about independence and expert staffing, in the HLP, it became clear that the only governing standard would simply be the best the DOI/BIA could do, hampered as they are by a void of necessary expertise and in the face of serious conflicts. This is not a fiduciary standard. This is capitulation to the status quo, with

a correct accounting for the IIM accounts at best only a secondary or tertiary concern.

I strongly believe that the only viable answer to the present trust reform problems is the creation of a neutral body, independent of the DOI, with both public and private support and input. The GSE suggested by the former Special Trustee Homan in his Strategic Plan is one such vehicle. The Indian Trust Management Reform Authority recommended by the Chairman of the Intertribal Monitoring Association on Indian Trust Funds could also serve such a purpose.

Ideally, such an independent body would be sponsored by, or have some connection with a banking or other financially sophisticated Federal regulatory or quasi-governmental body. Obvious candidates would include the OCC or, perhaps, one of the federally sponsored entities, such as Ginnie Mae or Freddie Mac (or its related entity, the Federal Housing Finance Board), which are intimately familiar with complex active asset/cash-flow trusts. It is also essential, in my mind, that oversight be retained by the Senate Committee on Indian Affairs and the Energy and National Resources Committee, as well as the House Natural Resources Committee.

The structure of the neutral body need not be complex. In its simplest form, it would be administered by a financially sophisticated person with experience dealing with intergovernmental agency issues. The current head of the District of Columbia Financial Responsibility and Management Review Board would be an excellent candidate. In addition to government financial input, such an entity must have the ability to engage trust experts from the private sector, representing the disciplines referred to above in connection with a proper commercial approach to solving the IIM trust problems. It is my belief that such an entity would be able to obtain the services of highly qualified trust administrators, accountants, lawyers and systems experts who would be willing to work on this problem. Believe it or not, there are many people in the private sector who understand how important this problem is, and would be willing to devote extraordinary effort to help forge a real solution.

The budget for such an enterprise could be a fraction of the DOI's expected Indian Trust Fund reform request for FY2000. Its mission would be to develop the critical conceptual and systems architecture described above, and called for by the GAO, in order to assure that future spending is actually aimed at viable solutions. No input would be ignored. The cognizant Congressional Committees, the GAO and the DOI/BIA would be consulted on an ongoing basis. The entity should be task specific, and should have a sunset timeline coordinated with trust reform progress, although some viable means of continuing trust supervision, or progressive privatization, would be required. Such a small, well-controlled, highly dedicated and expert group, if given the cooperation of the DOI, could not only accelerate implementation of a properly integrated trust function for the entire IIM business cycle, but would also go a long way to relieve the unhealthy pressure that has built up around the historic approach to this problem.

The head of the BIA recently cited a concern about potential independence for the IIM trust function that is very telling. He voiced a serious concern that wresting this problem from the BIA might spell the end of that Bureau as a viable governmental body. Although his concern has nothing to do with the Trust Reform Act's primary purpose of assuring IIM trust reform for the Indian beneficiaries, one can certainly be sympathetic with a concern that hundreds of people, many of whom are American Indians, may not have viable work in the future. But I would respectfully suggest to Mr. Gover that the kind of neutral body I and others are recommending might present an opportunity of a lifetime for many American Indians, within and outside the BIA. With the tremendous growth of retirement assets and the use of complex trust structures as investment vehicles, this country needs more qualified trust administrators. Given the increasingly high qualifications required for such professionals in the private sector, many move on quickly to other financial positions, such as investment banking. The staff of any neutral body would constantly be interfacing with many of the BIA staff who are currently working on the problem, and who would continue to do so in cooperation with the neutral body. The opportunities for real, commercial level trust administration training is obvious. Whether an affected BIA staff person chose to use such training in government service, or in working with Indian-owned independent banks or any independent bank or trust company, his or her prospects for the future could be far brighter than continuing to work on any single-purpose project.

The most important observation I can make, as a dispassionate outside professional, is for all major players in this process—including the DOI, the American Indian groups, the U.S. Congress and the Federal courts, to take advantage of the opportunities inherent in the present state of affairs.

This problem has been a long time in the making. The present staff of the DOI did not make the problem, and, in fact, have made some valiant efforts to solve it.

But the DOI has already lost control of the process. This is because the historical accounting, reconstruction and rehabilitation of the IIM accounts is currently in the hands of the Federal courts, and will be played out in some kind of court-mandated accounting, a receivership or a consensual settlement process, in each case requiring outside trust professionals to determine how history is to be reasonably reconstructed. I can state with some assurance that in a trust problem of this magnitude, the validity of the systems designed to take care of future trust and asset accounting will depend in large part on what is learned in that historic accounting and reconstruction process, even if that process is accomplished largely on a sample modeling basis. Simply put, most if not all of the variables involved in complex asset leasing and accounting, in beneficiary succession and in custody problems have already presented themselves in the protracted history of the IIM accounts. Those data variables are the building blocks for any future systems or procedural architecture. The intricacies of leasing potato land in Idaho, as opposed to oil and gas deposits in Oklahoma, and what has gone wrong in the respective accounts payable/accounts receivable histories of such leasing, is vital information for any new asset management system.

What I am suggesting is that *the two processes—historic accounting/reconstruction and future systems development are irrevocably linked*. The experts of any independent body charged with future asset and trust accounting design, unless they are to duplicate effort, must talk with the experts involved in the reconstruction process. Ideally, at some point those processes should be combined. But the point is that one portion of the “fix” process, historical accounting, is already in the hands of a neutral body, the court. It makes little sense, then, since both aspects of the fix must be irrevocably linked, to leave the largely derivative portion, new systems, to a governmental agency, steeped in the knowledge of Indian welfare, but devoid of any trust expertise and heavily conflicted. This makes even less sense since the entity currently working on the future systems fix, the DOI, is in a legally adversarial posture in the current Federal court proceedings where the historical fix is being played out.

When the recommended independent body is formed, serious consideration should be given to combining any court-mandated accounting or receivership reconstruction effort with new systems development tasks of that neutral body.

Politics and institutional self-preservation aside, it is time for the DOI to let go, to the extent it has not already been forced to do so by the pending class action litigation.

I would also hope that all those involved, given the nature of the interests of the American Indian beneficiaries at stake, would take a strictly non-partisan approach to the trust reform process. On a lighter note, if my long-time partner and former Federal Reserve Governor, Mr. Bucher, a life-long Republican, and a liberal Democrat like me, can agree on a fix methodology, we would hope that others might follow our lead.

Finally, and briefly, I would like to remark on recent published statements reportedly made by DOI officials in defense of their current reform efforts. Purported statements branding constructive critics of the DOI’s efforts as “anti-Indian” are very regrettable. So are suggestions that anyone opposing the DOI/BIA reform effort, and the proposed \$100 million in additional funding for that process, are simply motivated by a desire to keep money from the Indians.

As a seasoned business lawyer, I am unfortunately inured to even to this kind of name calling. People say unfortunate things when they are on the defensive. If these labels are put on me because of my testimony, so be it.

But there is a larger dynamic at work in this hearing room, and in this process generally, to which we all need to pay special heed. For many years my Pinn has represented a few large companies that have played an important role in the development of the State of Hawaii. During those years, I have watched the Honorable Vice Chairman of the Indian Affairs Committee delicately balance the compelling needs and circumstances of an indigenous American people with the good and not so good aspects of modern economic development, and with an influx of Americans from the contiguous 48 States to his beautiful home State. He has balanced these interests with skill and passion, assuring native Hawaiians of dignity, self-determination and a fair opportunity and the proper tools to self-actuate as fully participating American citizens rather than as an oppressed minority. This has not always been easy, but he has done it, and created unprecedented harmony while earning the abiding respect of the American business communities and the Hawaiian people. And he has never to my knowledge resorted to invoking racial or cultural differences in the process. In the course of many years of business activity on the West Coast, I have seen the same kind of splendid performance from the Alaska Congressional delegation. For anyone to continue to utilize any such ethnic terminology or suggest

such motives in the current IIM trust reform context, in a forum led by the distinguished senior Senator from Hawaii, and the distinguished Chairman of the Indian Affairs Committee, would be extremely inappropriate.

PREPARED STATEMENT OF BRUCE BABBITT, SECRETARY OF THE INTERIOR,
DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

The purpose of today's oversight hearing is to discuss the General Accounting Office's [GAO] report on trust funds management within the Department of the Interior (GAO/AIMD-99-53).

Mr. Chairman, members of the committee, as you may be aware, last Friday and Saturday, July 9 and 10, I testified in the U.S. District Court for the District of Columbia in the class action lawsuit styled as *Cobell v. Babbitt*. At this time the trial is still underway. After a full review of the situation, I have determined that it would not be appropriate for any Departmental employees to testify before you today on matters currently before the court.

Background On March 3, 1999, I and other Departmental witnesses testified before a joint hearing of these committees. The GAO had recently issued the draft version of the report that is the topic of today's hearing. I stated then that what the GAO was proposing in its draft report—in essence, that the Department stop, step back and perform a complicated and time-consuming analysis—was unacceptable to me.

The GAO report identified two general recommendations for the Department. The first cited the need to develop an information systems architecture for Indian trust operations, and the second outlined actions to reduce risk when acquiring a service for managing assets and land records.

The Department of the Interior recognizes the need for and benefits of an information technology architecture not just for systems related to trust funds, but for the Department's more than 90 mission-critical information technology systems and several hundred mission-essential systems currently in operation or in active planning. We agree with GAO that an information architecture provides a number of benefits. For example, it ensures the new systems meet the Department's business needs, it ensures the systems are inter-operable with each other, and it makes it easier to assess the benefits and impact of new systems and software. Over the past year, various bureaus and offices within the Department have been working to ensure our approach is fully adequate to the task and responsive to the current, as well as the future, information technology needs of the Department. In March 1998, we began formally documenting the architectures and related business rules currently in use (i.e., the baseline) within the Department and continue to develop a Department-wide enterprise target architecture that will contain the items recommended in this GAO report.

We currently have a baseline model showing the Department's business relationships, data flows, infrastructure, et cetera as they stand today and are preparing it for internal distribution and review. However, this baseline is just a start. The next step will, involve shaping the future or target model, a task that is more difficult and much more time-consuming. We will include a request for additional funding in our FY2001 budget request to complete the information systems architecture for the Department.

Over the past 2 years, our efforts at developing such an architecture have had to give way to the compelling need to meet the Year 2000 (Y2K) challenge. To date the Department has completed the Y2K independent verification and validation of all 90 mission-critical systems ahead of the Office of Management and Budget's March 1999 deadline and received an overall grade of A for its Y2K effort from Congressman Horn, Chairman of the Government Management, Information, and Technology Subcommittee. We have taken an organized, orderly approach that has produced excellent results. However, in order to do this we had to commit the majority of our information technology workforce to the task and we had to obtain additional funding as well.

We agree with the GAO recommendations to establish an information system architecture that defines business functions and validates functional requirements. However, the realities of our current situation—significantly outdated trust management systems, a need to make corrections as quickly as possible, and limited trained and experienced personnel—have called for an accelerated approach to the Trust Asset and Accounting Management System [TAAMS] project to ensure its success.

The GAO report describes potential risk areas and suggests ways to mitigate that risk. Given our constraints, we have chosen to mitigate the risk to TAAMS in several ways:

- Utilization of a development contractor, Applied Terravision (Artesia Data Systems), which is very experienced in system development and is a major developer and provider of software for the oil and gas industry. The oil and gas industry by its nature is very complex and Applied Terravision's success in this arena increases our confidence that we are reducing our risks by using their development expertise;

- Utilization of a modified commercial off-the-shelf system-based approach to develop TAAMS, modifying an existing commercial product to meet BIA needs;

- Utilization of an Independent Verification & Validation [IV&V] vendor, Systems Research and Applications International [SRA], a large nationally known corporation with excellent credentials in the IV&V arena;

- Active involvement of the end-user in the land record title and lease communities throughout the development of TAAMS, outlining business processes, identifying key interfaces, and reviewing the developers' work;

- Incremental implementation, starting with a thorough pilot of TAAMS at the Billings Area office which took place on June 25, followed by an operational test and IV&V assessment before making the decision to deploy; and

- Utilization of a contractor to operate and maintain the new system using a service bureau approach.

I have regularly stated to Congress that trust funds improvement is one of my highest priorities. Because of its priority in the Department, regularly receive reports and updates. The most recent meeting of my Trust Management Improvements Steering Committee took place on May 11, 1999. At this meeting, the Assistant Secretaries for Indian Affairs and Policy, Management and Budget, the Acting Special Trustee, affected bureau heads, other senior executives, and staff from BIA and OST provided reports and information to satisfy me that we were making good progress.

On my behalf, the Assistant Secretary for Policy, Management and Budget chairs a bi-weekly meeting of all affected organizational components where progress is assessed, assignments made, and problems resolved. Congressional and GAO staff have been invited to all these meetings and their involvement has proven beneficial. Last, the Assistant Secretary for Policy, Management and Budget has assigned a career senior executive whose sole responsibility is to work with senior managers in the Bureau of Indian Affairs and office of Special Trustee to achieve the milestones set out in my High Level Implementation Plan [HLIP].

On June 25, Assistant Secretary Gover, tribal leaders, and I formally initiated the Pilot of TAAMS in Billings, Montana. This marked the beginning of what will be several months of intensive operations, testing, independent verification, and review. At the conclusion of the Pilot project I will receive recommendations from Assistant Secretaries Gover and Berry, the Office of Special Trustee, the Chief Information Officer, and others about whether TAAMS is ready for deployment throughout the Bureau of Indian Affairs area offices and agencies, or whether further development work and testing is needed first. This process constitutes a vital part of our risk mitigation strategy and you have my pledge that the Department will make the correct decision with respect to the TAAMS project.

I believe we have a partnership, not only within the component parts of the—Department, but with the Congress as well, to improve Indian trust funds management. We need and must have the continued support of these committees if we are to move forward into the 21st century meeting our obligations to American Indians.

United States General Accounting Office

GAO

Testimony

Before the Committee on Indian Affairs and the Committee
on Energy and Natural Resources, U.S. Senate

For Release on Delivery
Expected at 9:30 am
Wednesday
July 14, 1999

INDIAN TRUST FUNDS

Challenges Facing
Interior's
Implementation of New
Trust Asset and
Accounting
Management System

Statement of Keith A. Rhodes
Director, Office of Computer and Information Technology Assessment
Accounting and Information Management Division



GAO/T-AIMD-99-238

Mr. Chairmen and Members of the Committees:

Thank you for inviting me to participate in today's hearing on the Department of the Interior's effort to improve its management of about a reported \$3 billion in Indian trust funds and about 54 million acres of Indian land. As you know, this effort is focused on correcting long-standing trust fund management weaknesses, which include inadequate accounting and information systems; untrained and inexperienced staff; backlogs in appraisals, ownership determinations, and recordkeeping; the lack of a master lease file and an accounts receivable system; inadequate written policies and procedures; and poor internal controls. Earlier this year, at the request of the Senate Committee on Indian Affairs, we reported on Interior's improvement plan to assess whether it provided an effective solution to addressing these long-standing problems.¹ In particular, we assessed whether one of the most critical improvement projects-- the acquisition of a new service for managing Indian assets and land records known as the Trust Asset and Accounting Management System or TAAMS— would cost-effectively meet trust management needs.

Today, I will discuss how we conducted our assessment of the TAAMS acquisition efforts, the results of our evaluation and our recommendations to Interior to address our findings, the current status of TAAMS, and the challenges still confronting Interior's implementation of this important system.

¹ Indian Trust Funds: Interior Lacks Assurance That Trust Improvement Plan Will Be Effective (GAO/AIMD-99-53, April 28, 1999).

WHAT IS TAAMS?

The Department of the Interior has the responsibility for managing Indian trust lands as well as accounting for income derived from those lands. The purpose of the TAAMS project--part of the overall Interior effort to improve the management of Indian trust funds and assets--is to obtain a modern, integrated information system for managing these income producing activities, distributing income to owners, and maintaining title and ownership records. The other projects that comprise this effort, which were defined in Interior's July 1998 High Level Implementation Plan, are described in attachment 1 to this testimony.

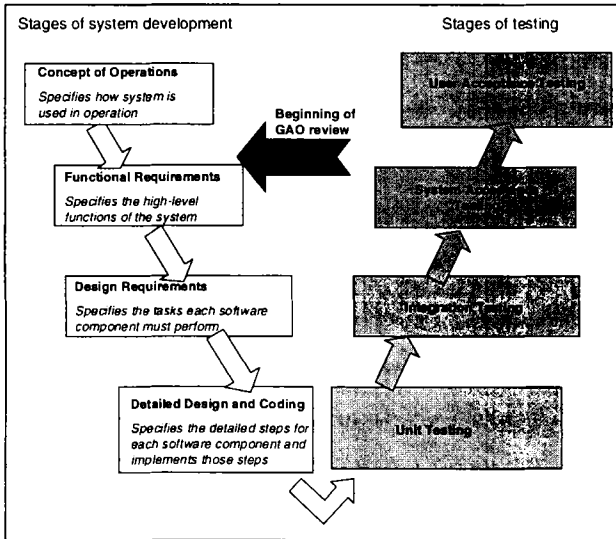
Interior intended to acquire TAAMS as a commercial-off-the-shelf (COTS) system. With this goal in mind, in May 1998, Interior issued a Request for Information. The responses from vendors were evaluated using a standardized form assessing data in 15 categories. After this survey was completed, Interior decided to combine the TAAMS project with another improvement project aimed at enhancing Interior's Land Records Information System (LRIS) and to obtain the needed functionality of these combined projects by acquiring a trust asset information management service using a COTS system. Under this approach, a contractor would manage Interior-provided land and trust account data in a contractor-owned and maintained data center while Interior would perform its

trust management functions by accessing contractor-provided applications that run in the data center.

On December 1, 1998, Interior awarded the TAAMS contract. As part of its improvement effort, Interior expects to spend about \$60 million on developing and improving information systems, including TAAMS.

OUR ASSESSMENT OF TAAMS

We began our assessment of TAAMS in July 1998 while Interior was in the process of specifying the system's functional requirements. Figure 1 below illustrates where our review began in the acquisition and development process.

Figure 1: Key System Development Processes and GAO's Review

When we review systems at this point in development, we normally assess whether agencies are following sound software development and acquisition practices. In this regard, the critical questions are the following.

- *Before embarking on its development effort, did the agency define an integrated architecture for its business operations to ensure that the system it is building and acquiring will not be duplicative or incompatible with other agency systems and, therefore, unnecessarily costly to maintain and interface?*

- *Before choosing a certain system or service, did the agency assess the value and risks of a sufficient range of alternatives for solving its business problem?*
- *After selecting a system or service, did the agency take prudent steps to minimize acquisition and development risks?*

The processes and controls we expect agencies to adopt that will help them to answer these and other questions are called for in best practice literature² or in legislative requirements, such as the Clinger-Cohen Act of 1996, and federal policy governing acquisition efforts, including Office of Management and Budget guidance and National Institute of Standards and Technology Federal Information Processing Standards.

To assess whether Interior was following sound development and acquisition practices, we reviewed Interior's documents relating to the acquisition, including the Request for Information, vendor responses, and the Request for Proposals. We also met with senior Interior officials responsible for acquiring the service, including Interior's Chief Information Officer, Assistant Secretary for Policy,

² For example, the Software Engineering Institute's Software Acquisition Capability Maturity Model SM (Capability Maturity Model SM is a service mark of Carnegie Mellon University, and CMM® is a registered trademark) which provides a logical and widely accepted framework for baselining an organization's current process capabilities (i.e., strengths and weaknesses) and assessing whether an organization has the necessary process discipline in place to repeat earlier successes on similar projects. The Institute of Electrical and Electronics Engineers, Inc., also issues guidance on practices to reduce system development and acquisition risks.

Management and Budget (Interior's Chief Financial Officer), Special Trustee, and the Interior contractor who assisted in the acquisition of the new service.

Subsequent to our report, we continued to monitor the status of the TAAMS project by attending status meetings, interviewing the TAAMS project manager, reviewing TAAMS project documentation, and observing a TAAMS test on July 7 and 8, 1999, at the contractor's Dallas, Texas, facility. This work has been performed in accordance with generally accepted government auditing standards.

RESULTS OF OUR EVALUATION OF THE TAAMS ACQUISITION EFFORTS

With regard to Interior's initial systems acquisition efforts, our April 1999 report found that Interior was not following sound practices that would (1) help ensure that TAAMS cost-effectively met trust management needs and (2) reduce development risks. First, although Interior planned for its components, such as the TAAMS and Trust Funds Accounting System, to independently improve information systems or acquire information services, at a cost of about \$60 million, it had not defined an integrated architecture for Indian trust operations. Architectures are comprehensive "construction plans" that systematically and completely describe an organization's target business environment, both in logical (e.g., missions, business functions, information flows) terms and technical

(e.g., software, hardware, communications) terms. The Clinger-Cohen Act requires the Chief Information Officer to develop and maintain an information systems architecture. Without one, agencies are at risk of building and buying systems that are duplicative, incompatible, and unnecessarily costly to maintain and interface.

Our previous reviews at the Federal Aviation Administration, Customs Service, Department of Education, Internal Revenue Service, and National Oceanic and Atmospheric Administration³ have shown that, while the absence of a complete architecture does not guarantee the failure of system modernization efforts, it does greatly increase the risk that agencies will spend more money and time than necessary to ensure that systems are compatible and in-line with business needs.

For example, in February 1997, we found that the FAA's lack of a complete architecture resulted in incompatibilities among air traffic control systems that (1) required higher-than-need-be system development, integration, and maintenance costs and (2) reduced overall system performance. Further, without having

³ See Air Traffic Control: Complete and Enforced Architecture Needed for FAA Systems Modernization (GAO/AIMD-97-30, February 3, 1997); Customs Service Modernization: Architecture Must Be Complete and Enforced to Effectively Build and Maintain Systems (GAO/AIMD-98-70, May 5, 1998); Student Financial Aid Information: Systems Architecture Needed to Improve Program's Efficiency (GAO/AIMD-97-122, July 29, 1997); Tax Systems Modernization: Management and Technical Weaknesses Must Be Corrected If Modernization Is To Succeed (GAO/AIMD-95-156, July 26, 1995); and Weather Forecasting: Systems Architecture Needed for National Weather Service Modernization (GAO/AIMD-94-28 March 11, 1994).

architecturally defined requirements and standards governing information and data structures and communications, FAA was forced to spend an additional \$38 million to acquire a system dedicated to overcoming incompatibilities among systems.

Similarly, in July 1997, we reported that because it lacked a system architecture, the Department of Education had made limited progress in integrating its National Student Loan Data System with other student financial aid databases. Moreover, without an architecture, the department could not correct long-standing problems resulting from a lack of integration across its student financial aid systems.

We concluded that until Interior defines the logical characteristics of its business environment and uses them to establish technical standards and approaches, it runs the risk that TAAMS and other information technology investments will be redundant and incompatible and out-of-sync with Indian trust management requirements. We therefore recommended that Interior develop an information systems architecture for Indian trust operations before making major investments in information technology systems.

Second, in undertaking its effort to acquire TAAMS, Interior did not follow a sound process for (1) ensuring that the most cost-effective technical alternative

was selected and (2) reducing acquisition risks. Specifically, Interior did not do the following.

- Assess the desirability of satisfying its requirements by (1) modifying existing legacy systems, (2) acquiring a COTS product and using existing Interior infrastructure resources, (3) building a system that would provide the necessary capability, or (4) acquiring a service. The Clinger-Cohen Act of 1996 requires agencies to establish a process to assess the value and risks of information technology investments, including the prioritizing of alternative projects.
- Perform a gap analysis in surveying the availability of COTS products. This analysis would systematically and quantitatively compare and contrast COTS products against Interior's requirements based on functional, technical, and cost differences.
- Require the contractor to demonstrate that the COTS system could work with Interior-provided data or that the system could interface with other Interior systems.
- Develop a risk management plan to address the possibility that the new service would not meet performance or business requirements, be able to

work with Interior systems, and/or be delivered on schedule and within budget.

Again, by not following these accepted best practices for technology service acquisitions, Interior was not necessarily dooming TAAMS to failure. Rather, it was further elevating the risk of encountering problems in the development stages that could delay implementation or unnecessarily increase costs. Thus, we recommended that Interior develop and implement an effective risk management plan and ensure that all project decisions are based on objective data and demonstrated project accomplishments, and are not schedule driven.

In commenting on a draft of our April 1999 report, Interior's Assistant Secretary for Policy, Management and Budget recognized that there were still problems to overcome with TAAMS, but expressed concern about some of our conclusions. However, in a subsequent letter to the Congress describing actions taken in response to our recommendations, Interior stated in July 1999 that the report has been helpful in causing the department to intensify its efforts to complete a systems architecture and identify the complete functional requirements for TAAMS. Interior further stated that it was in the process of developing a departmentwide enterprise target architecture that would contain the items recommended in our report (which included a high-level description of Interior's mission and target concept of operations, the business functions to be performed and the relationships among functions, the improvement projects to be

undertaken and how they are interrelated, and the specific standards and approaches that will be used to build or acquire systems). However, Interior stated that this effort has been slowed by the need to address the Year 2000 computing problem. Interior said that it plans to include a request for additional funding in its fiscal year 2001 budget request to complete the architecture.

Also, Interior officials are working on revising Interior's High Level Implementation Plan to add more details about each of the projects and to include realistic project time frames. The revised plan is expected to be provided to the Secretary of the Interior for his approval by July 31, 1999.

THE CURRENT STATUS OF TAAMS

According to the TAAMS project manager, the TAAMS contractor has already modified its COTS product to provide the functionality called for in the TAAMS contract. Currently, the contractor is in the process of testing this product. It expects to complete testing by mid September.

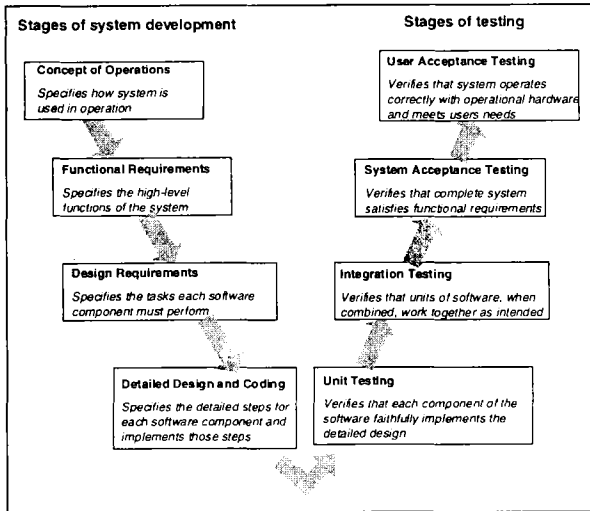
During the week of June 14, the contractor performed integration testing of the initial version of TAAMS, and the following week, Interior initiated a TAAMS pilot at the Billings, Montana, area office. The purpose of software integration testing is to verify that units of software, when combined, work together as intended. On July 7 and July 8, the contractor conducted preliminary user acceptance tests

at the contractor's facility in Dallas, Texas. We attended and observed these tests.

Interior has also engaged an independent verification and validation (IV&V) agent who will verify that system testing is performed in accordance with generally accepted guidelines. When the IV&V assessment is done in September 1999, Interior will decide whether or not to proceed with implementing TAAMS.

UPCOMING EXPECTATIONS AND CHALLENGES FOR TAAMS

It is critical for Interior to follow sound practices during the testing phase for TAAMS. Along these lines, I would like to highlight our expectations for the next few months beginning first with an illustration (figure 2) of the stages of system testing that we would expect Interior and its contractor to follow.

Figure 2: Major Stages of System Development and Testing

In considering this illustration, it is important to keep in mind that complete and thorough testing is essential to provide reasonable assurance that new or modified systems process information correctly and will meet an organization's business needs. To ensure that tests are *thorough*, organizations should perform tests in incremental steps. That is, they should first verify that each component of the software faithfully implements the detailed design. Once this is done, they should verify that combined units of software work together as intended. From there, they should verify that a complete system satisfies functional requirements using quantitative tests. Finally, they should verify that the system addresses the users' needs. To ensure tests are *complete*,

organizations should have well-defined functional and detailed requirements. If a requirement has not been defined, it is unlikely that a test will uncover a defect.

We would also expect Interior and its contractor to establish an effective management framework for testing. At a minimum, roles, responsibilities and expectations for testing should be defined; a test and evaluation plan should be written; and guidance defining policies, principles, strategies, standards, and processes relevant to planning, executing, and reporting on each level of testing should be issued. We would further expect the IV&V contractor to ensure that test standards and guidance are being met.

As we review TAAMS, we will evaluate whether an effective management framework has been established for tests and whether the tests themselves are planned and conducted in a structured, disciplined, and incremental fashion. However, evaluating TAAMS based solely on testing, will not ensure that Interior's trust needs will be met. First, it is likely that the system testing phase will not uncover all errors in the modified COTS system. In fact, testing performed through the system test phase often catches less than 60 percent of a program's defects.⁴ The remaining errors are found through other quality assurance practices, such as code inspections or by end-users after the software has been put into production. Thus, it will be important for Interior to implement a quality assurance program that is both rigorous and well-structured.

⁴Rapid Development: Taming Wild Software Schedules, Bruce McConnell, (Microsoft Press 1996).

Second, even if TAAMS works as intended, Interior will still need to ensure the integrity of the data that is loaded into the system; establish adequate policies, procedures, and controls for operation of the system; and provide timely training and equipment to system users. Without any one of these essential ingredients, the success of the TAAMS project could be undermined.

Third, in going forward, it will still be vital for Interior to define a systems architecture. Without blueprints to guide and constrain TAAMS and future information system development efforts, Interior will not have a systematic way to preclude either inconsistent systems design or development decisions or the resulting suboptimal performance and added costs associated with incompatible systems.

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Mr. Chairmen, this concludes my statement. I will be pleased to respond to any questions that you or other members of the Committees may have at this time.

Contact and Acknowledgements

For information about this testimony, please contact Keith Rhodes at (202) 512-6415. Individuals making key contributions to this testimony included Naba Barkakati, Cristina Chaplain, Michael Koury, and Chris Martin.

THIRTEEN PROJECTS FOR IMPROVING INDIAN TRUST MANAGEMENT

To address long-standing problems with its management of Indian trust funds and assets, Interior established a Trust Management Improvement Project (TMIP) and issued a High Level Implementation Plan for the TMIP on July 31, 1998. The 13 projects identified in the High Level Plan are directed at improving systems; enhancing the accuracy and completeness of Interior's data regarding the ownership and lease of Indian lands; and correcting deficiencies with respect to records management, training, policies and procedures, and internal controls within 3 years. For each project, the plan assigns management responsibility and identifies some supporting tasks, critical milestones, and resource estimates.

Interior estimates that it will spend \$147.4 million from fiscal years 1997 through 2000 on this effort. About \$60 million of this amount is to be spent on developing and improving information systems, \$54 million on data cleanup, \$17 million on records management, \$8 million on training, and \$8 million on all other activities.

Table 1 describes the 13 separate projects included in Interior's High Level Implementation Plan.

Table 1: Thirteen Projects for Improving Indian Trust Management

Project	Description
1 OST Trust Financial Records Clean Up	OST will standardize and verify Individual Indian Monies (IIM) system data for trust resource records, and correct and establish an inventory of hard copy records for each trust fund account.

Attachment 1

Attachment 1

2	Bureau of Indian Affairs (BIA) Trust Resource Records Cleanup	BIA trust resource records will be cleaned up to ensure timely ownership and land status data. Processing backlogs will be worked off to update existing and future trust resource management systems data essential to ensure that income distribution and resource management functions can operate from timely data.
3	BIA Probate Backlog	BIA will inventory, identify, and develop action plans and procedures to eliminate probate backlog.
4	Office of Hearings and Appeals (OHA) Probate Backlog	OHA will inventory, identify, and develop action plans and procedures to eliminate OHA probate backlog.
5	BIA Appraisal Program	This project includes an assessment of the present BIA appraisal program, policies and procedures; reviews of staff qualifications; determination of the adherence to uniform Standards of Professional Appraisal Practices; and development of corrective action plans, as appropriate.
6	Trust Funds Accounting System	A proven commercial off-the-shelf (COTS) trust accounting system will be acquired, using a service bureau approach, to replace the present BIA IIM accounting module.
7	Trust Asset and Accounting Management System (TAAMS)	The Department will evaluate, acquire, and pilot, standardized, proven COTS general trust management system technology (Master Lease, Billings and Accounts Receivable, and Collection subsystems) to the extent practicable. Following successful testing and piloting, the TAAMS system will proceed to full implementation across BIA, replacing the present BIA Integrated Records Management System.
8	BIA Land Records Information System (LRIS) Enhancements	This project contemplates the modernization of BIA's official title system to provide on-line and up-to-date legal and beneficial title ownership and encumbrance for all Indian lands and resources, including automated calculation of data storage of fractional interests and automated chain-of-title processes and information.
9	Minerals Management Service (MMS) System Reengineering	MMS will design, develop, and implement new core business processes for MMS' royalty management functions, with supporting systems.
10	Records Management	A joint records management solution for Interior trust records will be developed and implemented, involving OST, BIA, MMS, Bureau of Land Management (BLM), OHA and other relevant Interior offices. The project scope includes Indian trust records management, storage, access, control and disposition and contemplates electronic recordkeeping, including imaging technology.
11	Policy and Procedures	Interior trust policies and procedures will be inventoried, reviewed, and, where appropriate, revised or established. This project specifically involves and includes representatives of OST, BIA, MMS, BLM, OHA, and other departmental offices involved in Indian trust management.

Attachment 1

Attachment 1

12	Training	This project will plan and deliver both trust management and employee skills training relevant to delivery of Interior's trust fiduciary responsibilities to American Indians. Training will be provided across the Interior trust workforce and include tribes and participating contractors.
13	Internal Controls	This project will systematically address documented internal control deficiencies in Indian trust management, item by item, that have been identified through internal and external audit, congressional oversight and outside reviews. Corrective actions will be validated and/or designed to assure resolution of all internal control weaknesses.

Source: Department of the Interior July 1998 High-Level Implementation Plan.

(913866)

United States General Accounting Office

GAO

Report to the Chairman, Committee on
Indian Affairs, U.S. Senate

April 1999

INDIAN TRUST FUNDS

Interior Lacks Assurance That Trust Improvement Plan Will Be Effective





United States
General Accounting Office
Washington, D.C. 20548

Accounting and Information
Management Division

April 28, 1999

B-280590

The Honorable Ben Nighthorse Campbell
Chairman, Committee on Indian Affairs
United States Senate

Dear Mr. Chairman:

This report responds to your request that we evaluate the Department of Interior's High-Level Implementation Plan (High Level Plan) for improving its management of the Indian trust funds and resources under its control. This plan focuses on correcting many of the long-standing problems with Indian trust operations, which include inadequate accounting and information management systems; backlogs in asset appraisals, ownership determination, and record keeping; and poor internal controls. As discussed with your office, we agreed to assess whether Interior has reasonable assurance that (1) the High Level Plan provides an effective solution for addressing these long-standing problems, and (2) its acquisition of a new asset and land records management service will cost effectively satisfy trust management needs.

Results in Brief

Interior does not have reasonable assurance that its High Level Plan for improving Indian trust operations provides an effective solution for addressing long-standing management weaknesses. The plan (1) recognizes the severity of long-standing weaknesses in managing trust fund assets, (2) identifies 13 projects intended to improve information systems, enhance the accuracy and completeness of its data regarding the ownership and lease of Indian lands, and address deficiencies with respect to records management, training, policy and procedures, and internal controls, and (3) assigns responsibility for oversight and management of the 13 projects. However, Interior has not properly analyzed its information technology needs which are essential to the overall success of the plan. Until Interior develops an information systems architecture addressing all of its trust management functions, it cannot ensure that its information systems will not be duplicative or incompatible or will optimally support its needs across all business areas.

Interior also does not know whether its acquisition of a new service for managing Indian assets and land records will cost effectively meet trust management needs. Before deciding to contract with a service vendor, Interior did not adequately define important service requirements or

sufficiently analyze technical alternatives. Nor did Interior take the steps needed to minimize acquisition risks. In particular, it did not develop a risk management plan, ensure that the vendor's system could work with Interior's data and systems, or establish realistic project time frames. Thus, Interior faces an unnecessarily high risk that the service will not meet its general business and specific performance needs, and it lacks the means for dealing with this risk.

Background

The Secretary of the Interior is responsible for administering the government's trust responsibilities to tribes and Indians, including managing about \$3 billion in Indian trust funds and administering about 54 million acres of Indian land. Management of the Indian trust funds and assets has long been characterized by inadequate accounting and information systems; untrained and inexperienced staff; backlogs in appraisals, ownership determinations, and recordkeeping; the lack of a master lease file and an accounts receivable system; inadequate written policies and procedures; and poor internal controls.

To address these long-standing problems, the Congress created the Office of the Special Trustee for American Indians (OST) and required the Special Trustee to develop a comprehensive strategic plan for trust fund management. In April 1997, the Special Trustee submitted a strategic plan to the Congress, but Interior did not fully support the plan. At this Committee's July 1997 hearing on the Special Trustee's strategic plan, we testified on the results of our analysis of the strategic plan and provided our assessment of needed actions related to implementation issues that we had identified during that analysis.¹

On August 22, 1997, the Secretary of the Interior indicated that he and the Special Trustee for American Indians had agreed on the problems that needed to be solved immediately and called for the development of a high level implementation plan within 60 days. The High Level Plan was issued about 11 months later on July 31, 1998. In developing the High Level Plan, Interior did not prepare a documented analysis of its mission-related and administrative processes. Rather, it took the problems identified in the Secretary's memorandum one by one and proposed separate projects to

¹Financial Management, Indian Trust Fund Strategic Plan (GAO/TA/IMD-97-138, July 30, 1997)

B-280690

address each. Later, at the Secretary's direction, an additional project was added. The 13 separate projects are shown in table 1.

The projects are directed at improving systems, enhancing the accuracy and completeness of Interior's data regarding the ownership and lease of Indian lands, and correcting deficiencies with respect to records management, training, policy and procedures, and internal controls within 3 years. For each project, the plan assigns management responsibility and identifies some supporting tasks, critical milestones, and resource estimates.

Some of the projects are already being implemented. For example, a new Trust Funds Accounting System has already been deployed at several Interior sites. We did not assess the status or effectiveness of this project or other individual projects. Instead, we focused on whether Interior has assurance that the information technology aspects of the plan, which are essential to the success of the majority of the projects and therefore the overall plan, were properly planned and executed.

Table 1: Thirteen Projects for Improving Indian Trust Management

	Project	Description
1	OST Trust Financial Records Clean Up	OST will standardize and verify Individual Indian Monies (IIM) system data for trust resource records, and correct and establish an inventory of hard copy records for each trust fund account.
2	Bureau of Indian Affairs (BIA) Trust Resource Records Cleanup	BIA trust resource records will be cleaned up to ensure timely ownership and land status data. Processing backlogs will be worked off to update existing and future trust resource management systems data essential to ensure that income distribution and resource management functions can operate from timely data.
3	BIA Probate Backlog	BIA will inventory, identify, and develop action plans and procedures to eliminate probate backlog.
4	Office of Hearings and Appeals (OHA) Probate Backlog	OHA will inventory, identify, and develop action plans and procedures to eliminate OHA probate backlog.
5	BIA Appraisal Program	This project includes an assessment of the present BIA appraisal program, policies and procedures; reviews of staff qualifications; determination of the adherence to uniform Standards of Professional Appraisal Practices; and development of corrective action plans, as appropriate.
6	Trust Funds Accounting System	A proven commercial off-the-shelf (COTS) trust accounting system will be acquired, using a service bureau approach, to replace the present BIA IIM accounting module.

B-280690

Project	Description
7 Trust Asset and Accounting Management System (TAAMS)	The Department will evaluate, acquire, and pilot, standardized, proven COTS general trust management system technology (Master Lease, Billings and Accounts Receivable, and Collection subsystems) to the extent practicable. Following successful testing and piloting, the TAAMS system will proceed to full implementation across BIA, replacing the present BIA Integrated Records Management System.
8 BIA Land Records Information System (LRIS) Enhancements	This project contemplates the modernization of BIA's official title system to provide on-line and up-to-date legal and beneficial title ownership and encumbrance for all Indian lands and resources, including automated calculation of data storage of fractional interests and automated chain-of-title processes and information.
9 Minerals Management Service (MMS) System Reengineering	MMS will design, develop, and implement new core business processes for MMS' royalty management functions, with supporting systems.
10 Records Management	A joint records management solution for Interior trust records will be developed and implemented, involving OST, BIA, MMS, Bureau of Land Management (BLM), OHA and other relevant Interior offices. The project scope includes Indian trust records management, storage, access, control and disposition and contemplates electronic recordkeeping, including imaging technology.
11 Policy and Procedures	Interior trust policies and procedures will be inventoried, reviewed, and, where appropriate, revised or established. This project specifically involves and includes representatives of OST, BIA, MMS, BLM, OHA, and other departmental offices involved in Indian trust management.
12 Training	This project will plan and deliver both trust management and employee skills training relevant to delivery of Interior's trust fiduciary responsibilities to American Indians. Training will be provided across the Interior trust workforce and include tribes and participating contractors.
13 Internal Controls	This project will systematically address documented internal control deficiencies in Indian trust management, item by item, that have been identified through internal and external audit, congressional oversight and outside reviews. Corrective actions will be validated and/or designed to assure resolution of all internal control weaknesses.

Source: Department of the Interior July 1998 High Level Implementation Plan.

Interior estimates that it will spend \$147.4 million from fiscal years 1997 through 2000 on this effort. About \$60 million of this amount is to be spent on developing and improving information systems, \$54 million on data cleanup, \$17 million on records management, \$8 million on training, and \$8 million on all other activities.

Scope and Methodology

The objectives of our review were to assess whether Interior has reasonable assurance that (1) the High Level Plan provides an effective solution for addressing long-standing problems with Interior's Indian trust

responsibilities and (2) its acquisition of a new asset and land records management service will cost effectively satisfy trust management needs.

To determine whether Interior has reasonable assurance that the High Level Plan provides an effective solution for addressing Interior's long-standing problems with its Indian trust responsibilities, we

- reviewed the Clinger-Cohen Act of 1996² and current technical literature³ as a basis for assessing the information technology aspects of the High-Level Plan;
- reviewed the process that was used to develop the plan;
- reviewed the Strategic Plan that was produced by Interior's Special Trustee for American Indians;
- met with senior Interior officials responsible for developing the plan, including Interior's Chief Information Officer, Chief Financial Officer, Deputy Special Trustee, and the Interior contractor who assisted in the development of the plan; and
- analyzed the High Level Plan for internal consistency and compliance with generally accepted best practices.

We focused on the information technology aspects of the plan because they are essential to its success.

To determine whether Interior has reasonable assurance that its acquisition of a new asset and land records management service will cost effectively satisfy trust management needs, we

²Public Law 104-106. The Clinger-Cohen Act requires agencies to analyze their missions and, based on the analysis, revise mission-related and administrative processes, as appropriate, before making significant investments in information technology used to support those missions.

³For example, we reviewed GAO's framework for designing and developing system architectures, the Project Management Institute's Guide to the Project Management Body of Knowledge, and the Software Engineering Institute's guidance on software development and software acquisitions.

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- reviewed the Clinger-Cohen Act of 1996; federal policy governing acquisition efforts including Office of Management and Budget guidance and Federal Information Processing Standards; and other current literature to determine the statutory and administrative requirements and best practices that should be used in acquiring software-intensive services such as the asset and land records service;⁴
 - reviewed Interior documents relating to this acquisition, including the Request for Information, vendor responses, and the Request for Proposals. We did not review the selection process or documents produced as part of this process subsequent to the issuance of the Request for Proposals; and
 - met with senior Interior officials responsible for acquiring the service, including Interior's Chief Information Officer, Chief Financial Officer, Special Trustee, and the Interior contractor who assisted in the acquisition of the new service.

We performed our work at the Department of the Interior, Office of the Special Trustee, and Bureau of Indian Affairs in Washington, D.C., from July 1998 through November 1998 in accordance with generally accepted government auditing standards. We requested comments on a draft of this report from the Secretary of the Interior. On March 19, 1999, the Assistant Secretary for Policy, Management and Budget provided us with written comments, which are discussed in the "Agency Comments and Our Evaluation" section of this report and reprinted in appendix I.

⁴For example, we reviewed the Software Engineering Institute's Software Acquisition Capability Maturity ModelSM (Capability Maturity ModelSM is a service mark of Carnegie Mellon University, and CMM® is a registered trademark) which provides a logical and widely accepted framework for baselining an organization's current process capabilities (i.e., strengths and weaknesses) and assessing whether an organization has the necessary process discipline in place to repeat earlier successes on similar projects.

Without Systems Architecture, Interior Lacks Assurance That the Plan Provides an Effective Solution to Long-Standing Problems

Despite the fact that Interior plans for its components to independently improve information systems or acquire information management services, at a cost of about \$60 million, it has not yet defined an integrated architecture for Indian trust operations. The Clinger-Cohen Act requires the Chief Information Officer to develop and maintain an information systems architecture. Without a target architecture, agencies are at risk of building and buying systems that are duplicative, incompatible, and unnecessarily costly to maintain and interface.

In 1992, we issued a report⁵ defining a comprehensive framework for designing and developing system architectures. This framework specifies (1) the logical or business component of an architecture which serves as the basis for (2) the technical or systems component.

The logical component ensures that the systems meet the business needs of the organization. It provides a high-level description of the organization's mission and target concept of operations; the business functions being performed and the relationships among functions; the information needed to perform the functions; the users and locations of the functions and information; and the information systems needed to support the agency's business needs.

The technical component ensures that the systems are interoperable, function together efficiently and are cost-effective over their life cycles. The technical component details specific standards and approaches that will be used to build systems, including hardware, software, communications, data management, security, and performance characteristics.

Experience shows that without a target architecture, agencies risk building and buying systems that are duplicative, incompatible, and unnecessarily costly to maintain and interface. For example:

- In February 1997, we reported⁶ that the Federal Aviation Administration's (FAA) lack of a complete architecture resulted in

⁵Strategic Information Planning: Framework for Designing and Developing System Architectures (GAO/IMTEC-92-51, June 1992).

⁶Air Traffic Control: Complete and Enforced Architecture Needed for FAA Systems Modernization (GAO/AIMD-97-30, February 3, 1997).

incompatibilities among its air traffic control systems that (1) required higher-than-need-be system development, integration, and maintenance costs and (2) reduced overall system performance. Without having architecturally defined requirements and standards governing information and data structures and communications, FAA was forced to spend an additional \$38 million to acquire a system dedicated to overcoming incompatibilities between systems.

- In May 1998, we reported⁷ that the Customs Service's architecture was incomplete and ineffectively enforced, and that, according to a contractor, Customs components had developed and implemented incompatible systems, which increased modernization risks and implementation costs.
- In July 1997, we reported⁸ that because it lacked a system architecture, the Department of Education had made limited progress in integrating its National Student Loan Data System with other student financial aid databases. Moreover, without an architecture, the department could not correct long-standing problems resulting from a lack of integration across its student financial aid systems.
- In July 1995, we reported⁹ that because its architecture was incomplete and did not define the interfaces and standards needed to ensure the successful integration of its Tax System Modernization projects, IRS was at increased risk of developing unreliable systems that would not work together effectively and would require costly redesign.

Without an architecture for Indian trust operations, Interior has no assurance that the 13 projects delineated in the High Level Plan and the systems supporting them are cost-effective and are not duplicative, inconsistent, and incompatible. In fact, in reviewing the High Level Plan, we found indications that Interior was already encountering these problems. For example:

- Three weeks after the plan was issued, Interior recognized that TAAMS and LRIS were so closely related that they should be merged into a single project. The BIA Probate Backlog project and the OHA Probate

⁷Customs Service Modernization: Architecture Must Be Complete and Enforced to Effectively Build and Maintain Systems (GAO/AIMD-98-70, May 5, 1998).

⁸Student Financial Aid Information: Systems Architecture Needed to Improve Program's Efficiency (GAO/AIMD-97-122, July 29, 1997).

⁹Tax Systems Modernization: Management and Technical Weaknesses Must Be Corrected If Modernization Is To Succeed (GAO/AIMD-95-156, July 26, 1995).

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Backlog project also appear to be closely related; however, Interior did not thoroughly analyze the relationship between these two efforts in formulating the High Level Plan and did not determine whether, like TAAMS and LRIS, they should be combined.

- The High Level Plan shows that the BIA Probate Backlog and the OHA projects depend on the TAAMS project to provide them with a case tracking system by the end of 1998. This system is to manage the flow of probate cases through BIA and OHA and enable management to identify resources needed to eliminate the backlog. However, in describing TAAMS, the High Level Plan does not mention the case management system. Further, according to Interior officials, development of the case tracking system under TAAMS is not scheduled to be funded until fiscal year 2000, and delivery is not planned before September 2000.
- Although Interior has already initiated several projects to "clean" data that will be used by TAAMS, it has not yet defined the data elements that this project needs.

Until Interior defines the logical characteristics of its business environment and uses them to establish technical standards and approaches, it will remain at risk of investing in projects that are redundant and incompatible, and do not satisfy Indian trust management requirements cost effectively.

Interior Does Not Know if New Asset and Record Management Service Will Cost Effectively Satisfy Trust Management Needs

In undertaking its effort to acquire a new asset and land record management service, Interior failed to follow a sound process for ensuring that the most cost-effective technical alternative was selected and reducing acquisition risks. Specifically, Interior did not adequately define important service requirements or sufficiently analyze technical alternatives. Further, Interior did not develop an overall risk management plan, require the contractor to demonstrate its system could work with Interior's data and systems, or establish realistic project time frames.

Interior's Decision to Acquire a Service for Managing Assets and Land Records

Interior intended to acquire TAAMS as a commercial-off-the-shelf (COTS) system. With this goal in mind, in May 1998, Interior issued a Request for Information. The responses from vendors were evaluated using a 15-category form. After this survey was completed, Interior decided to combine the TAAMS project with the LRIS project and to obtain the needed functionality of these combined projects by acquiring a trust asset information management service using a COTS system. Under this

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approach, a contractor would manage Interior-provided land and trust account data in a contractor-owned and maintained data center while Interior would perform its trust management functions by remotely accessing contractor-provided applications that run in the data center.

Service Requirements Were Not Adequately Defined

To help ensure successful acquisition of a software-intensive service, information technology experts recommend that organizations establish and maintain a common and unambiguous definition of requirements (e.g., function, performance, help desk operations, data characteristics, security, etc.) among the acquisition team, the service users, and the contractor.¹⁰ The requirements must be consistent with one another, verifiable, and traceable to higher level business or functional requirements. Poorly defined, vague or conflicting requirements can result in a service which does not meet business needs or which cannot be delivered on schedule and within budget.

Interior did not follow a sound process for defining requirements. First, Interior did not define high-level functional requirements for projects contained in the High Level Plan to help guide the requirements development process for each of the individual projects. For this effort, such high-level functional requirements might have included the following.

- The contractor's system will contain the necessary data to support the financial information needs of the probate function.
- Records management policies and procedures will be consistent with departmental guidelines.
- Sensitive but unclassified data, such as data covered by the Privacy Act, will be encrypted in accordance with Federal Information Processing Standards whenever they are transmitted outside of the facility that generated the data.
- Data elements must conform to applicable departmental naming conventions and formats specified in the data dictionary.
- Automated records must be maintained in a form that ensures land ownership records can be traced back to the original source of the ownership.

¹⁰For example, the Software Engineering Institute's Software Acquisition Capability Maturity Model includes requirements development as a key practice.

By not defining high-level functional requirements, Interior lacks assurance that the projects it develops and acquires will meet its business needs.

Second, while Interior specified general service requirements in its request for proposal such as the need for the contractor to (1) administer all databases, (2) perform maintenance operations outside BIA's normal working hours, (3) provide configuration management of data center hardware and software, and (4) perform daily, weekly, and monthly backup of operational data and archiving, it did not clearly specify all of BIA's requirements, including its functional, security, and data management requirements. For example:

- While Interior stated that the system "shall include safeguards against conflicts of interest, abuse, or self-dealing," it did not define these terms. A definition of these terms in the context of Indian trust operations is necessary to design and determine the adequacy of proposed system safeguards and approaches.
- In discussing system security, Interior (1) specified an inappropriate technology for encrypting data,¹¹ (2) did not specify how long system passwords should be, and (3) did not require password verification features.¹²
- Interior did not define key data management requirements, including what data elements were needed to meet Interior's information requirements and whether existing systems contained the necessary data elements.

Technical Alternatives Were Not Sufficiently Analyzed

The Clinger-Cohen Act requires agencies to establish a process to assess the value and risks of information technology investments, including consideration of quantitatively expressed projected net, risk-adjusted

¹¹Encryption involves the transformation of original text (known as plaintext or cleartext) into unintelligible text (also known as ciphertext). The requirement in the Request for Proposal stated that "[t]he Contractor shall provide a method of connectivity that allows secure transmission of data utilizing 64-bit Public Key Encryption". Public key encryption systems (also called asymmetric cryptography) are designed so that the key used for encryption is different from the key used for decryption. Public key systems are used to encrypt the keys that are used by systems using symmetric key cryptography to encrypt data. (This is commonly referred to as key management.) They are not used for encrypting large amounts of data such as that in TAAMS because public key algorithms are (1) slow (symmetric key systems are generally at least 1,000 times faster) and (2) vulnerable to certain types of computer attacks which depend upon analyzing extensive amounts of encrypted data.

¹²When a user enters the desired password, a password checking program will compare the password to a wordlist and a series of rules to ensure that it cannot be easily guessed.

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return-on-investment, and specific quantitative and qualitative criteria for comparing and prioritizing alternative information technology projects. Only by comparing the costs, benefits, and risks of a full range of technical options can agencies ensure that the best approaches are selected.

Interior did not thoroughly analyze technical alternatives before choosing a vendor to provide the asset and land records management service. First, Interior did not assess the desirability of satisfying its requirements by (1) modifying existing legacy systems, (2) acquiring a COTS product and using existing Interior infrastructure resources, (3) building a system that would provide the necessary capability, or (4) acquiring a service.

Second, in surveying the availability of COTS products, Interior did not perform a gap analysis which would systematically and quantitatively compare and contrast these products against Interior's requirements based on functional, technical, and cost differences. Specifically, although Interior concluded based on the results of its Request for Information that none of the COTS products available from responding vendors would meet all its requirements, Interior did not determine, for each COTS product, which requirements could not be satisfied and how difficult and expensive it would be to make the needed modifications. For example, Interior did not determine whether all needed data elements could be represented conveniently and manipulated effectively by each COTS product.

Third, in acquiring a service, Interior did not consider how its information, once it had been loaded into a contractor's system, would be retrieved by Interior for subsequent use when the contract was terminated. Because Interior did not compare the costs and benefits of a full range of technical options, it has no assurance that it selected the most cost-effective alternative.

Acquisition Risk Was Not Minimized

According to information technology experts, a key practice associated with successful information technology service acquisitions is to formally identify risks as early as possible and adjust the acquisition to mitigate those risks.¹³ An effective risk management process, among other things, includes (1) developing an acquisition risk management plan to document

¹³For example, the Software Engineering Institute includes acquisition risk management as a key practice in its Software Acquisition Capability Maturity Model because it is considered by software experts to be an integral part of the solicitation, project performance management, and contract performance management processes.

the procedures that will be used to manage risk throughout the project, (2) conducting risk management activities in accordance with the plan (e.g., identifying risks, taking mitigation actions, and tracking actions to completion), and (3) preparing realistic cost and schedule estimates for the services being acquired.

In acquiring its new TAAMS service, Interior did not carry out critical risk management steps. First, Interior did not develop a risk management plan. Without this plan, Interior has no disciplined means to predict and mitigate risks, such as the risk that the service will not (1) meet performance and business requirements, (2) work with Interior's systems, and/or (3) be delivered on schedule and within budget.

Second, in structuring a capabilities demonstration for the contractor's system, Interior did not require the contractor to use Interior-provided data. Ensuring that the contractor's system can work with data unique to Interior is important since some data elements, such as fractionated ownership interests, are not commonly used in the private sector.

Third, in structuring the capabilities demonstration, Interior did not require the contractor to demonstrate that its system could interface with Interior's Trust Fund Accounting System and a Mineral Management Service system. As a result, Interior will not know whether the contractor's system can interoperate with its legacy systems.

Fourth, Interior did not prepare a realistic project management schedule. Organizations following sound software acquisition practices would typically (1) identify the specific activities that must be performed to produce the various project deliverables, (2) identify and document dependencies, (3) estimate the amount of time needed to complete the activities, and (4) analyze the activity sequences, durations, and resource requirements. By contrast, Interior used the Secretary's stated expectation that all Indian trust fund-related improvements should occur within a 3-year period beginning in 1998 as a starting point for developing the TAAMS project schedule.¹⁴

¹⁴Memorandum from the Secretary to the Special Trustee for American Indians, Assistant Secretary for Indian Affairs, Deputy Commissioner for Indian Affairs, Director of the Minerals Management Service, and Director of the Bureau of Land Management, dated August 22, 1997. This memorandum stated the Secretary's overall expectations for Interior's improvement effort.

Because it did not establish clear requirements and did not take critical steps to manage risk effectively, Interior has no assurance that the new asset and land records management service will meet its specific performance, security, and data management needs or that the service can be delivered on schedule and within budget.

Conclusions

Interior cannot realistically expect to develop compatible and optimal information systems without first developing an information systems architecture for Indian trust operations. If it proceeds to implement the projects outlined in the High Level Plan without taking these steps, individual improvement efforts such as the initiative to acquire a service for managing assets and land records may well incur cost and schedule overruns and fail to satisfy Interior's trust management needs.

Recommendations

To ensure that Interior's information systems are compatible and effectively satisfy Interior's business needs, we recommend that, before making major investments in information technology systems to support trust operations, the Secretary direct the Chief Information Officer to develop an information systems architecture for Indian trust operations that (1) provides a high-level description of Interior's mission and target concept of operations, (2) defines the business functions to be performed and the relationships among functions; the information needed to perform the functions; the users and locations of the functions and information; and the information systems needed to support the department's business needs, (3) identifies the improvement projects to be undertaken, specifying what they will do, how they are interrelated, what data they will exchange, and what their relative priorities are, and (4) details specific standards and approaches that will be used to build or acquire systems, including hardware, software, communications, data management, security, and performance characteristics.

To reduce the risks we identified with the effort to acquire a service for managing assets and land records, we recommend that the Secretary of the Interior direct the Chief Information Officer to (1) clearly define and validate functional requirements, security requirements, and data management requirements, (2) develop and implement an effective risk management plan, and (3) ensure that all project decisions are based on objective data and demonstrated project accomplishments, and are not schedule driven.

Agency Comments and Our Evaluation

In its written comments on a draft of this report, Interior states that our oversight provides a valuable perspective and allows Interior to benefit from our experience in dealing with similar issues at other agencies. However, Interior disagrees with the report's conclusions and does not indicate whether it will implement the recommendations.

In disagreeing with the report's first conclusion (that Interior does not have reasonable assurance that its High Level Plan for improving Indian trust operations provides an effective solution for addressing long-standing management weaknesses), Interior states that although it recognizes the importance of a formal architecture and does not yet have one, the "lack of a formal architecture is not a significant impediment to success in this case, given the use of proven COTS products." Interior also expresses confidence because this effort is smaller than the modernization efforts that have failed at other agencies like FAA.

This position is not valid. The decision to use COTS products does not compensate for the lack of an integrated information system architecture for Indian trust operations. Such an architecture would have identified and preferably reengineered the business functions of trust operations, and then mapped these into information systems to support the business functions. Just choosing COTS products from the marketplace does not accomplish the same purpose. In fact, the close relationship between business functions and IT is the reason we focus on all 13 projects in the High Level Plan as a whole, even though, as Interior points out in its comments, only 4 of the projects are information technology systems projects. Further, small efforts, like IRS' \$17 million Cyberfile project,¹⁵ as well as large ones, like FAA's modernization, have failed due to poor program management, including lack of an architecture. With an estimated cost of \$60 million for IT systems and an additional \$54 million for data cleanup, the information systems supporting the 13 projects will have to be effectively managed if they are to succeed.

Interior bases its decision to proceed with its IT acquisitions without a formal architecture (and without an estimated date for completing one) on the "pressing need for more responsive Indian trust systems." However, moving to implement complex systems before developing an architecture

¹⁵ Tax Systems Modernization: Management and Technical Weaknesses Must Be Overcome To Achieve Success (GAO/T-AJMD-96-75, March 26, 1996) and Tax Systems Modernization: Cyberfile Project Was Poorly Planned and Managed (GAO/AJMD-96-140, August 26, 1996).

does not expedite solutions. Instead, it greatly increases the chance of building duplicative systems, introducing potential integration problems, and perpetuating inefficient and overlapping business processes that currently exist in Indian trust operations. This is especially true in the case of TAAMS as Interior does not yet know whether the COTS product can effectively work with other Interior systems or with Interior-provided data. Also, as Interior notes in its comments, it consolidated TAAMS and LRIS from two separate projects into one because the "consolidation eliminated duplication within each system (80% of the data is shared), made better use of limited resources, and eliminated potential integration issues." Similarly, Interior states that it is now considering streamlining the probate process and consolidating the BIA and OHA probate projects. Had Interior developed a sound architecture, it would have systematically identified the shared data and overlapping business processes before proposing either TAAMS and LRIS or BIA probate and OHA probate as separate projects in the High Level Plan. Moreover, it would have done the analysis needed to know whether other duplications and/or inconsistencies exist among its projects.

Interior also disagrees with the report's second conclusion that Interior does not have reasonable assurance that its acquisition of the new asset and land records management (TAAMS/LRIS) service will cost effectively satisfy trust management needs. Our report bases this conclusion on findings that Interior did not follow sound processes for defining TAAMS/LRIS requirements, thoroughly analyzing technical alternatives before selecting an approach, or managing technical risk.

Interior states that its requirements were adequately defined and that its requirements definition process consisted of conducting several requirements reviews with the end-user community and deciding "early on to adopt the business processes afforded through implementation of the COTS product." Just as deciding to use COTS products does not compensate for the lack of an integrated system architecture for Indian trust operations, selecting a COTS product *before* thoroughly analyzing requirements does not constitute an effective requirements definition process. Further, while Interior says that it will adopt the business processes afforded through implementation of the COTS product, it has at the same time recognized that the COTS product does not meet all of its requirements and will have to be modified. For example, Interior must modify the COTS product to handle fractionated interests and title requirements that are unique to Indian ownership.

Interior does not directly address the finding that it did not thoroughly analyze technical alternatives before choosing a vendor and a COTS product to provide asset and land records management services. As discussed in the report, these technical alternatives include (1) modifying existing legacy systems, (2) acquiring a COTS product and using existing Interior infrastructure resources, (3) building a system to provide the necessary capability, or (4) acquiring a service. Instead, Interior dismisses any use of the legacy systems, stating that the systems "... employ both outdated software products and processing techniques . . .," and "... would require a virtual rewrite," does not address the second and third alternative at all; and states once again, without having performed a gap analysis, that "the use of COTS product, combined with a service bureau approach, does provide the Department an economical and timely solution." Because it has not thoroughly analyzed all technical alternatives and does not have convincing, objective evidence to support its decision, there is no assurance that Interior has selected the most cost-effective alternative.

Interior then describes several actions which it feels minimizes acquisition risk. Specifically, it "... established a risk management plan shortly after awarding the TAAMS contract"; will have other contractors review the work of the TAAMS contractor; and will evaluate the results of pilot testing. Because all of these actions occur *after* the vendor was selected and the contract awarded, they are not relevant to our finding that Interior did not follow a sound process for selecting an approach and, therefore, does not have reasonable assurance that its trust management needs will be met cost effectively.

In its comments, Interior says "... a rigorous, standard approach was not used in identifying the requirements for TAAMS . . ."; and "... we would have preferred to use actual BIA data [in Operational Capabilities Demonstrations], but given the time constraints, we decided to use scripts . . .". Further, Interior recognizes that it had to correct resulting errors identified in our report. Specifically, the Request for Proposal and/or the contract for TAAMS had to be changed to clarify terms such as "conflicts of interest, abuse, and self-dealing"; to correct the mistaken reference to Public Key encryption; and to require monthly delivery to the government of all data to facilitate import into other applications. However, because Interior does not explicitly recognize the flaws in its processes and does not acknowledge the relationship between these weaknesses and the errors that have already occurred, it has not committed to correcting these weaknesses and it is likely to repeat similar errors in the future.

Interior also raises several subsidiary issues. It asserts that our review was incomplete because we did not assess the TAAMS vendor selection process, which, in Interior's opinion, was necessary to determine if the TAAMS acquisition was cost effective. The objective of our audit was not to determine how Interior selected its vendor; it was to determine whether Interior had done the analysis needed to determine what was required and to select an approach to the project that would be cost-beneficial. How Interior selected its vendor is not relevant to that objective and was therefore not within the scope of our audit.

Interior claims that we stopped the audit work "prematurely." However, Interior does not cite any significant events that occurred or critical corrections made since the audit ended that would alter our conclusions. In fact, during the review, we evaluated every document provided by Interior. Moreover, this review was initiated, performed, and concluded after its objectives were completed according to its established schedule. The only deviation from schedule was made to accommodate Interior's request for an additional 6 business days to comment on this report.

Interior is concerned that we focused only on the TAAMS/LRIS project and therefore, were not in a position to make broad statements about the High Level Plan. In focusing on all IT aspects of the plan, we assessed the interrelationships of the individual 13 projects as well as the overall process for developing the plan. This enabled us to determine that Interior did not have reasonable assurance that the High Level Plan provides an effective solution for addressing its long-standing management weaknesses. We assessed the TAAMS/LRIS project because it was ongoing during our review, is one of the major IT projects in the High Level Plan, and illustrates fundamental problems with Interior's approach.

Finally, Interior states that once it deploys TAAMS, it will have the means to reengineer its business processes to the "industry standard." This runs counter to the basic tenets of reengineering, that is, organizations should *first* reengineer business processes and *then* assess and acquire or build systems necessary to support those processes. This enables organizations to ensure that they implement optimal technical solutions and that they do not limit their business process alternatives or entrench themselves in ineffective ways of doing business.

Interior needs to implement our recommendations to substantially reduce the risk to key IT systems in trust management operations. Interior's

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comments are provided in their entirety in appendix I along with our detailed evaluation of them.

We are sending copies of this report to Senator Daniel K. Inouye, Vice Chairman, Senate Committee on Indian Affairs and to Senator Robert C. Byrd, Senator Joseph I. Lieberman, Senator Ted Stevens, and Senator Fred Thompson, and to Representative Dan Burton, Representative George Miller, Representative David Obey, Representative Henry A. Waxman, Representative C.W. Bill Young, and Representative Don Young, in their capacities as Chairmen and Ranking Minority Members of the Senate Committee on Appropriations, Senate Committee on Governmental Affairs, House Committee on Appropriations, House Committee on Resources, and House Committee on Government Reform. We are also sending copies of this report to the Honorable Jacob J. Lew, Director, Office of Management and Budget, and to other interested congressional committees and Members of Congress. Copies will also be made available to others upon request.

If you have any questions about this report, please call me at (202) 512-6415. Other major contributors to this report are listed in appendix II.

Sincerely yours,



Dr. Rona B. Stillman
Chief Scientist for Computers and
Telecommunications

Appendix I

Comments From the Department of the Interior

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240



MAR 19 1999

Mr. Gene L. Dodaro
Assistant Comptroller General
General Accounting Office
441 G Street, NW
Washington, DC 20548


Dear Mr. Dodaro:

The Department of the Interior appreciates the opportunity to provide the enclosed comments on your draft report on Indian Trust Funds. This program is essential to repairing many longstanding problems in the management of the Indian trust funds and resources. As with any complex endeavor, we appreciate having many different people review and comment on the planning and implementation of this project. This being said, the draft report issued by your office gives us serious concerns.

From our perspective, the General Accounting Office (GAO) study team stopped their efforts prematurely. They did not consider accomplishments and products provided or offered to the study team that directly addressed GAO's concerns in the report. The Department is aware there are still problems to overcome, and we are actively working to make this project a success. I request you consider our comments and rewrite your report to reflect the more accurate depiction of the Interior's efforts for improving Indian trust fund management.

I would be pleased to talk with you in person about these issues, at your convenience. Staff may contact Tom Gerhoffer of my office at (202) 208-6906 (or tom_gerhoffer@ios.doi.gov) concerning questions about the enclosure.

Sincerely,


John Berry
Assistant Secretary
Policy, Management and Budget

Enclosure

Appendix I
 Comments From the Department of the
 Interior

Department of the Interior Response
 to
 GAO Draft Report on Indian Trust Funds (AIMD-99-53)

We appreciate GAO's efforts to assist us in our trust fund management improvement process that will provide important benefits to the Indian Nation. Your oversight provides this Department another valuable perspective and affords us the benefit of their experiences with agencies dealing with similar issues. We have worked closely and openly with this GAO team with the goal of succeeding in our trust management improvement efforts.

We note that the GAO team concluded their fieldwork in November 1998, prior to the award of the Trust Asset and Account Management System (TAAMS) contract and subsequent High Level Implementation Plan (HLIP) activities. This early conclusion of the fieldwork has led, we believe, to serious misunderstandings of our effort and progress. The Department of the Interior, therefore, is not in agreement with the conclusions of this draft GAO report. Particularly troubling is the broad conclusion on the High Level Implementation Plan and its 13 subprojects, when it appears the focus of the audit was the TAAMS Land and Records Integration System (LRIS) subproject. Also, the report, in general, tends to address the HLIP subprojects as if they are 13 individual automation projects requiring seamless technical integration. That is not the case. They are programmatic as opposed to technically linked.

The report paints a picture of this Department as pursuing an incomplete approach to seeking a solution to serious Native American trust management issues. The Department believes it would not be prudent for GAO to issue a report making the following broad conclusions considering the limited level of examination performed:

- "Interior does not have reasonable assurance that its High Level Plan for improving Indian trust operations provides an effective solution for addressing long-standing management weaknesses."
- "Interior faces an unnecessarily high risk that the service will not meet its general business and specific performance needs, and it lacks the means for dealing with this risk."

Our basis for considering this GAO report as incomplete is explained in general below. The GAO review staff responsible for this draft report:

- stopped their review with the initial Request for Proposal (RFP), even though one of their stated objectives was to determine if the new Trust Asset and Accounting Management System (TAAMS) was a cost effective approach
- did not review the selection process, the selection criteria, or cost estimates used in vendor selection.

Appendix I
Comments From the Department of the
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did not interview the Department's contracting staff to discuss any of the acquisition issues - risks, RFP amendments, alternatives studied, etc.

The following are more specific discussions of particular items described in the draft report:

Lacking An Architecture

The Department does recognize the importance of an overall architecture and our formal architecture will embrace Commercial-Off-The-Shelf (COTS) and commercial standards and protocols. We do have desktop standards, standards for Department Administrative systems and data communications. Neither TFAS nor TAAMS is using a hybrid architecture. Preliminary work on a system architecture has started with analysis and validation of the "AS IS" view of the Interior and the beginnings of our future architecture are underway. All bureaus and offices within the Department are active participants in the ITA development. Specific systems such as TFAS and TAAMS are integral components of that architecture and will shape the Department's "TO BE" architecture. Due to the pressing need for more responsive Indian trust systems it was prudent to continue with the acquisition of the TFAS and TAAMS systems using existing Departmental guidance and standards.

Throughout this draft report, there is reference to the 13 subprojects of the HILP as if they were all automated projects requiring tight technical integration. In reality, most are not. About a third of them are truly Information Technology systems projects - TFAS, TAAMS, Land Record Information System (LRIS) and the Mineral Management Service's (MMS) Royalty Management reengineering effort. Three of those four involve the purchase of Commercial-Of-The-Shelf (COTS) products as their solution. The remaining 9 projects are non-IT and focus on data cleanup, records, policy and training issues. The most important link among the 13 HILP subprojects are trust fund programmatic issues, not information technology.

The agencies GAO references (Federal Aviation Administration (FAA) and Internal Revenue Service) are extreme examples of what happens when a target architecture is not present. The FAA, for example, involves a multi-BILLION dollar effort and more than 200 large projects. Duplication of effort and integration issues is very likely in such a situation. Our effort is significantly smaller - less than 1% in terms of the FAA costs and less than 2% in terms of number of projects. Interoperability and efficient functionality are considerations but the lack of a formal architecture is not a significant impediment to success in this case, given the use of proven COTS products.

The GAO report cites the decision to consolidate LRIS with TAAMS within weeks after the High Level Implementation Plan was completed as evidence of Interior encountering problems due to a lack of a system architecture. The HILP represents a general roadmap to fixing trust management problems; it is not an acquisition strategy. The decision not to have two separate procurements underway at the same time was due to the high degree of dependency each system has on the other. The consolidation eliminated duplication within each system (80% of the data is shared), made better use of limited resources, and eliminated potential integration issues.

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See comment 1.

In another observation, GAO points to the two probate projects as another example of problems due to the lack of a formal architecture and the incompleteness of the HLIP. Unlike TAAMS and LRIS, however, these two probate projects are not automated activities. Both have analyzed their probate processes and are discussing various issues. A Probate Reinvention team, composed of BIA and OHA personnel, was established to make recommendations for streamlining the probate process, and we are considering amending the HIP for a single BIA/OHA probate subproject.

According to GAO, Interior has "already initiated several projects to clean up the data that will be used by TAAMS". This is not correct. The Department is currently developing a cost-effective strategy for completing data clean-up activities for the TAAMS project. Limited essential data clean-up effort for TAAMS is just now getting started.

Acquiring a Service for Managing Assets and Land Records

See comment 2.

The GAO report also gives the impression the Department of the Interior changed its direction in the middle of its TAAMS acquisition. The report states the Department moved from a COTS system purchase to a service bureau approach. Quite the contrary. We began the acquisition seeking a COTS product together with a service bureau and the expectation that service bureau contractor would maintain the COTS product for the Government. We remained with that approach throughout the acquisition process. Combining the LRIS and TAAMS projects into a single procurement did not change the strategy used, it just made better use of limited resources. A similar service bureau approach was used earlier in the acquisition of the trust funds accounting system, TFAS, and the results to date are very good.

Additionally, the results of the Request For Information (RFI) reviews reinforced the Department's belief that a single vendor could meet both the TAAMS and LRIS functionality using a COTS product, particularly given the quantity of data shared among the two systems.

Requirements Not Adequately Defined

See comment 3.

While a rigorous, standard approach was not used in identifying the requirements for TAAMS, the requirements definition for the TAAMS subproject was not arbitrary. A decision was made early on to adopt the business processes afforded through implementation of the COTS product. LRIS needs were very well defined in a separate requirements document. This documentation plus several requirements reviews with the end-user community provided the basis for TAAMS requirements. The requirements were adequately defined.

The draft report implies a number of high-level functional requirements were not addressed in the HLIP. The HLIP was not intended to be a requirements document. For example, the report states "the TMIP should have included a requirement that all data covered by the Privacy Act will be encrypted in accordance with the Federal Information Processing Standards." The RFP (which was prepared before the GAO report was drafted) and subsequent contract for TAAMS did include that requirement.

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See comment 4.

The GAO report states that Interior inadequately addressed safeguard and security issues. Specifically, GAO stated Interior did not define such terms as "conflicts of interest, abuse and self-dealing" to the vendors. During the bidders' conference for the TAAMS RFP, this particular issue surfaced. The terms were explained verbally and also provided in the written "questions and answers" amendment for the RFP/ subsequent contract. This information was provided to GAO during their review period.

Additionally, GAO has voiced some concern about Interior's approach to system security. While the RFP/ subsequent contract did use the words "Public Key" incorrectly by referring to "Public Key Encryption", both the Government and the contractor are in agreement with using 128-byte symmetric encryption technology. The use of Public Key Infrastructure (PKI) or asymmetric encryption was not our intent. The current 128-byte encryption requirement included in the TAAMS contract will adequately safeguard the data.

See comment 5.

The GAO report states we "did not specify how long systems passwords should be". Under C.4.8.2 *Application Security*, the requirement states "Access to the system shall at a minimum require unique user ids with passwords. (Password length should have a minimum length of 8 alpha-numeric characters with upper and lower case letters permuted.) The system shall record unsuccessful attempts to log on and provide automatic trace routing capability. The system shall require users to change their password every 60 days. The system shall track previously used passwords (at least the last 5) and require the user to enter a new unique password." While a more elaborate security scheme is possible (e.g. compare new password against a system-maintained wordlist so passwords are not easily guessed), the level of security we have described is sufficient for safeguarding the data. Additionally, the vendor's standard security currently available in the COTS software exceeds our requirement.

See comment 6.

The draft report states that Interior did not define key data elements nor did it outline what data elements were existing in legacy systems. The RFP for TAAMS listed all existing data elements from existing systems (Section 1.2) and indicated these elements were necessary for TAAMS. The RFP and subsequent contract also asked the vendor to provide a data elements list and dictionary.

Technical Alternatives Were Not Sufficiently Analyzed

See comment 7.

The draft report states that Interior did not adequately analyze the legacy systems to determine if they could be modified to satisfy its requirements. GAO report (AIMD-97-138) in 1997 points to the inadequacies of the current automated systems. The current legacy systems employ both outdated software products and processing techniques (batch processing). To use these systems would require a virtual rewrite.

The use of a COTS product, combined with a service bureau approach, does provide the Department an economical and timely solution. GAO's report on Indian Trust Funds (AIMD-94-185) also recommends the use of COTS products as a viable solution. A fully customized solution, tailored to BIA operations, however, would have taken significant time to complete.

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See comment 8

(two to three years) and not necessarily guaranteed a solution. It would also tend to minimize any reengineering of the BIA's processes by recreating inefficiencies that already exist. With the current COTS solution, the Department will use industry-standard approaches for conducting its business and have the means to reengineer its processes to the industry standard.

The GAO reports that "Interior did not determine which requirements could not be satisfied and how difficult and expensive it would be to make the needed modifications." The Department had an independent contractor, Mitretek, complete a cost estimate for the various requirements described in the TAAMS RFP. It provided costs for customization and enhancements to the COTS software as well as other key areas (e.g., conversion services, software licenses). This document was offered to GAO.

Further, GAO criticizes Interior for its handling of its data should Interior terminate the contract. To our knowledge, GAO did not review the material available, though the Department provided this information during their review period. Contract language was changed to include monthly delivery to the Government of all data to facilitate import into other applications. Additionally, the Government would own the software licenses for the COTS products and could install it on other equipment should we terminate the original contractor for non-performance.

Acquisition Risk Was Not Minimized

The draft report states that Interior did not carry out critical risk management steps. In fact, Interior established a risk management plan shortly after awarding the TAAMS contract. It is updated monthly and used as a key focal point in the In-Progress Reviews (IPR) of the TAAMS project conducted by the Department's Chief Information Officer (CIO). A risk management plan for all 13 HLP projects is under development.

TAAMS is also making use of "peer reviews" by having another contractor review the system product developed by the TAAMS contractor. To further mitigate risk, the Department is acquiring an Independent Verification and Validation contractor who will review the Billings pilot system and provide us feedback on the contractor's success at meeting the TAAMS requirements.

The report was critical of not using actual Interior data during the capabilities test demonstration. As stated in previous responses to GAO, we would have preferred to use actual BIA data, but given the time constraints, we decided to use scripts for the Operational Capabilities Demonstrations (OCD). The detailed scripts used in the OCD asked the vendor to perform specific mandatory functions, demonstrate acceptable processing speed against a live database similar in size to that of BIA's, and demonstrate their communications links/capabilities. One to two days were allotted for each vendor OCD. Additionally, the results from the site surveys and RFI discussions increased our confidence level for using such an approach.

From the scripts, the Technical Evaluation team scored each vendors' success and noted any shortcomings. These OCD evaluations contributed to the Technical teams overall evaluation. They proved effective in assisting the team's technical evaluation. Because of the competitive

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sensitivity of the evaluation, GAO was not given the scripts but was offered the opportunity to view them.

Interior will further mitigate risk by testing the vendor's services, using our data and communications, at a pilot site (Billings Area) in June 1999. The three-month pilot test is a measured event. If the system presented by the vendor fails to perform satisfactorily, we will not accept the system and will stop to reevaluate.

Conclusion

The Department of the Interior recognizes the HLIP, in general, and the TAAMS project, more specifically, do contain some elements of risk. This is not an uncommon occurrence in projects and system acquisitions of any size. However, the Department has addressed these risks, has made efforts to mitigate them, and will continue to do so. Using such methods and approaches as COTS products, pilot test implementations, incremental deployment, frequent senior-level management reviews, project management, and risk management plans, this Department intends to ensure success of the HLIP projects. With the poor condition of our legacy systems and the looming litigation issues, not to mention the primary purpose - service to the Native Americans - the Department must take corrective action now. The automated systems we are building will establish a solid foundation from which to continue improvements. TAAMS and TFAS will not address every trust fund requirement but will provide a strong base to move forward. The subprojects outlined in the HLIP are not static. Refinement of each subproject as we work through the elements of each subproject and their relationship with each other and their milestone dates will change somewhat as our business processes change. HLIP provides a basic roadmap of the high-level functions we need to accomplish to fulfill our trust management responsibilities.

See comment 9.

The following are GAO's comments on Interior's March 19, 1999, letter responding to a draft of this report.

GAO Comments

1. According to Interior's High Level Plan (page 70), five projects are classified as data cleanup projects: OST data cleanup, BIA data cleanup, BIA probate backlog, OHA probate backlog, and BIA appraisal program. According to the schedules provided in the High Level Plan (pages 64 through 67) OST data cleanup was initiated in January 1998 and BIA data cleanup project began in August 1998.
2. Our intent was to present the sequence of events chronologically, not to imply that there was a change in direction in the middle of the TAAMS acquisition. We clarified the language in the report to reflect this more precisely.
3. The report does not state that the High Level Plan should include all high-level requirements. Our report makes the point that the high-level requirements for all 13 projects were not defined anywhere.
4. Although Interior's letter indicates otherwise, neither the RFP nor the amendment included any definitions for the terms "conflicts of interest, abuse and self-dealing." In subsequent correspondence to us, Interior officials told us that they believe these terms are commonly used and do not require additional definition. However, Interior requires that TAAMS implement safeguards to identify incidents of conflicts of interest, abuse, and self-dealing. Precise definition of requirements, not assumptions about "common usage" for terms that by their nature are subject to broad interpretation, is needed to implement systems features effectively.
5. The TAAMS RFP states this requirement as follows: "Access to the system shall at a minimum require unique user IDs with passwords. The system shall record unsuccessful attempts . . ." The parenthetical phrase discussing password length does not appear. After receiving a draft of this report, Interior issued an amendment to the contract containing the phrase. This is another example of inadequate requirement definition that Interior is addressing piecemeal and ad hoc, without correcting the fundamental process weaknesses that caused the problem.
6. Section J of the RFP contains a collection of data elements from different legacy systems, but it is not a data dictionary for TAAMS. Because the data elements required by TAAMS were not defined prior to asking

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vendors to respond to the TAAMS RFP, Interior has no assurance that the vendor's product can handle all data elements crucial to Indian trust operations.

7. We are not suggesting a priori that the legacy system is a viable solution. Neither we nor Interior can make informed decisions without analyzing relevant data. We are pointing out that, consistent with the Clinger-Cohen Act and good IT investment practices, Interior should have evaluated all technical alternatives before selecting one.

8. Interior has quoted this statement out of context. The full sentence from our draft report states: "Specifically, although Interior concluded based on the results of its Request for Information that none of the COTS products available from responding vendors would meet all its requirements, Interior did not determine, for each COTS product, which requirements could not be satisfied and how difficult and expensive it would be to make the needed modifications." Our point is that Interior did not perform a gap analysis on products available in the marketplace to determine whether the COTS approach was optimum. According to a Mitretek official, the Mitretek study was completed after the Request for Proposal was issued and was intended to serve as the government's independent cost estimate for use in source selection.

9. Interior is in error. While all projects do, indeed, contain some elements of risk, our point was that Interior was incurring and not mitigating unnecessarily high levels of risk because it does not have an integrated architecture for Indian trust operations and has not corrected fundamental weaknesses in its IT management processes.

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TESTIMONY

“GENERAL ACCOUNTING OFFICE’S REPORT ON TRUST FUNDS MANAGEMENT WITH THE DEPARTMENT OF THE INTERIOR”

July 14, 1999

Before the Senate Committee on Indian Affairs
and
Committee on Energy and Natural Resources

My name is Mark Fox and I am Vice Chairman of the Three Affiliated Tribes of the Fort Berthold Reservation in North Dakota. I also serve as the Chairman of the Intertribal Monitoring Association on Indian Trust funds (ITMA) which represents a consortium of approximately 40 tribes who have a vested interest in tribal trust funds matters.

Mr. Chairmen and members of the Committee, the ITMA strongly supports the Department’s appropriation request of approximately \$100 million for trust reform in FY 2000. However, tribes believe the Department is taking an unacceptable risk with tribes’ and taxpayers’ money. Experts have determined that the plan the Department is proposing is seriously flawed and is likely to result in developing systems that will fail to meet trust standards. For that reason, ITMA has concluded, and this testimony proposes, that it is imperative the overall control of the trust reform effort be placed under the authority of an independent entity such as a “trust reform control board” with trust reform expertise and that does not have the conflicts of interest that the Department has.

The critical question before the Committees today is whether Congress and the Indian trust beneficiaries should take the gamble of trusting the Interior Department to develop and properly implement the trust reform plans without any outside controls. At the March 3, 1999 hearing Chief Charles O. Tillman of the Osage Tribe spoke of how, for 150 years, the Interior Department told the tribes and individual Indians, “trust me, trust me”, and how we trusted them to our great detriment. Once again, the Interior Department is telling us and the Congress, “trust us”.

It is ITMA's view that it would be a big mistake to trust the Department to properly implement such a large project without the benefit of experienced trust experts. Consider the following.

1. Every outside trust expert that has reviewed the Department's plans has expressed serious concerns that the plan is likely to fail.
2. Other than individuals within the Office of Trust Funds Management under the proficient direction of Donna Erwin, the programs and systems being installed by the Department are being administered and implemented by individuals who have little or no specific experience or expertise on trust systems. This type of management would never be tolerated in any other situation and would be a breach of the United States' trust responsibility to the Indian beneficiaries. Indian people demand the same level of expertise that the users of any bank would demand.
3. The entire trust reform effort continues to be under the jurisdiction of the very offices that has mismanaged the trust for the past 150 years. Management experts say, and ITMA believes, that to correct this failed system requires an outside entity to come in and conduct clean up. ITMA is concerned that reforms will be implemented in a way that insures any improprieties by the Department are not brought to the forefront to be dealt with appropriately.

In summary, according to the outside experts, the Department is requesting sole control over \$100 million to implement a plan that has a high risk of failure and which will be implemented by persons who have little or no specific expertise in trust reform.

It is instructive to compare the efforts to reform of the Indian trust systems with Congress' efforts to reform the District of Columbia Government. The District of Columbia Financial Responsibility and Management Review Board was situated outside of the D.,C. Government and was composed of highly respected and experienced financial and management experts. The legislation gave the Control Board the full and exclusive authority to develop the plans for reforming the D.C. Government and gave it overall authority for implementing those plans. Today, four years after that Board was created, it appears the D.C. Government has made major strides.

ITMA recommends that Congress enact legislation creating a control board for the trust reform that is similar to the one that successfully engineered the reform of the D.C. Government. Attached to our testimony is proposed draft legislation that would enact such an approach.

The proposed legislation would provide for the following:

- 1) Establishment of a Trust Management Reform Authority which would be housed within a regulatory authority similar to the Federal Housing Finance Board.
- 2) The Trust Management Reform Authority would have the full authority to develop the plans for reform of Interior's trust systems and would hire the outside experts to accomplish the task. While this will delay the reform effort for a short time, it will result in a plan that is developed by objective experts. The trust management functions would remain within the Interior Department, but the Authority would have control to direct the implementation of those plans, working with the Department but having the final say.
- 3) The Authority will sunset once the reform effort is completed. However, to insure that the new systems installed within Interior do not deteriorate, the bill calls for an agency similar to the Federal Housing Finance Board to establish an Office of Indian Trust Regulation which would examine the Department's trust management on an on-going basis.

ITMA urges the Congress to enact such legislation prior to the Department's expending the FY 2000 appropriations to ensure funds are appropriately used.

ITMA has endorsed the concept of S. 739 subject to certain modifications as proposed by ITMA. The bill, introduced by Senators Murkowski and Campbell provides for the outsourcing of the investment management of certain Indian trust funds.

Thank you for this opportunity to voice our concerns to the Congress regarding trust fund matters.

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**ITMA PROPOSED AMENDMENTS TO THE
 “AMERICAN INDIAN TRUST FUND MANAGEMENT REFORM ACT”**

**CREATING AN INDIAN TRUST MANAGEMENT REFORM AUTHORITY AND
 THE OFFICE OF INDIAN TRUST REGULATION**

The American Indian Trust Fund Management Reform Act is amended by adding a new title, “The Indian Trust Management Reform Authority and the Office of Indian Trust Regulation,” which shall read as follows:

**TITLE __ THE INDIAN TRUST MANAGEMENT REFORM AUTHORITY AND THE OFFICE
 OF INDIAN TRUST REGULATION**

Section ____ Establishment of the Indian Trust Management Reform Authority

(a) Establishment.-- There is hereby created the Indian Trust Management Reform Authority, which shall be located within the Federal Housing Finance Board and which shall report directly to the Chairman of the Federal Housing Finance Board.

(b) Composition.-- The Authority shall be composed of three members appointed by the Chairman of the Federal Housing Finance Board after consultation with the Indian account holders. At least one member of the Authority shall be a representative of the Indian account holders who has extensive experience with the Indian trust management systems. The other two members shall be persons with expertise in trust management and the reform of trust systems. The Chairman of the Federal Housing Finance Board shall appoint one member of the Authority as the chairman of the Authority. The Chairman of the Authority shall serve on a full-time basis and shall be compensated for at a rate determined by the Chairman of the Federal Housing Finance Board to be appropriate for the position but not less than the daily rate of basic pay payable at level II of the Executive Schedule under Section 5313 of Title 5. The other members of the Authority shall serve on a part-time basis and shall be compensated on a daily basis at a rate determined by the Chairman of the Federal Housing Finance Board to be appropriate for the position but not less than the daily rate of basic pay payable at level II of the Executive Schedule under Section 5313 of Title 5.

(c) Staff and Consultants.-- The Authority shall employ such staff and consultants as it deems necessary to carry out the responsibilities assigned to it by this Title, subject to a plan and budget approved by the Chairman of the Federal Housing Finance Board and the availability of funds.

Section __ Powers and Responsibilities of the Authority

The Authority shall have the primary responsibility and all powers necessary to bring the management of Indian trust funds and trust assets into compliance with trust standards, as such standards have been established by the case law and by the Federal regulatory agencies that examine national bank trust departments. Specifically, the Authority shall:

(a) In consultation with the Secretary of the Interior, develop a comprehensive plan for bringing the management of Indian trust funds and assets into compliance with trust standards. The plan shall include specific implementation steps and a detailed implementation schedule.

(b) Establish a team composed of the Secretary of the Interior, the Secretary of the Treasury, such other Interior and Treasury Department officials as the Chairman of the Authority deems appropriate, and such contractors and consultants as the Authority chooses to employ to implement the plan developed pursuant to subsection (a) of this section. Each member of the team shall take any and all steps within the member's authority to implement the terms of the plan, under the direction of and subject to the instructions of the Chairman of the Authority or the Chairman's designee.

(c) Assume management responsibility for any contracts for trust reform-related activities that the Interior Department entered into prior to the effective date of this Act.

(d) Regularly monitor the management of trust functions by the Interior and Treasury Departments to determine if said Departments are carrying out their trust management functions in a manner that is consistent with the plan provided for in subsection (a) of this section and trust standards. The Departments shall make available all records, information, and personnel as requested by the Authority in carrying out this responsibility.

(e) Require all employees of the Interior Department and the Department of the Treasury to comply with any instructions issued by the Authority regarding trust reform and trust management and to require the Secretary to reassign any Interior Department manager from his or her position who fails, or whose

employees fail, to comply with any instructions issued by the Authority regarding trust reform and trust management.

(f) Approve any appointments within the Interior Department to positions that have, as their primary function, the management of trust functions or the implementation of the plan provided for in subsection (a) of this section.

(g) Approve any proposed Interior Department reprogramming of funds appropriated for trust reform or trust management.

Section ___ Contracting Out of the Trust Funds Investment Functions

The Authority shall have the authority to and shall be responsible for implementing Title __ of this Act [the Murkowski-Campbell Bill] providing for the contracting out of the investment management of the Indian trust funds under certain circumstances. Upon the termination of the Authority, this function shall be assumed by the Secretary of the Interior.

Section ___ Funding for The Carrying Out of the Authority's Functions

All funds appropriated by Congress to the Interior Department for trust reform shall be subject to the control of the Authority. The Authority shall assess the Interior Department for any costs it incurs in carrying out its responsibilities under this Title by submitting monthly invoices to the Secretary. The Secretary shall pay such invoices within 21 days of receipt, but solely from funds appropriated for trust reform. If the Secretary disagrees with any element of the invoice, he shall pay it and then submit the matter to the General Accounting Office for resolution.

Section ___ Annual Budgets

(1) The Authority shall annually submit to the Secretary of the Interior its proposed budget for the forthcoming fiscal year. Said budgets shall be included, without any changes, in the President's annual budget request to Congress.

(2) The Secretary of the Interior, prior to submitting his budget request for the forthcoming fiscal year to OMB, shall submit to the Authority the Department's proposed budget requests for all trust management programs administered by the Department. The Authority shall certify whether, in its expert opinion, the proposed budget will be adequate to enable the Department to meet its trust responsibility and whether the funds will be used in a manner that will meet trust standards. A copy of those certifications shall be included in the President's budget request. In addition, the Authority shall send a copy of the certifications directly to the Subcommittees on

Interior and Related Agencies of the House and Senate Appropriations Committees, the House Committee on Resources, and the Senate Committee on Indian Affairs.

Section __ Advisory Committee

The Authority shall, after consultation with the Indian account holders, establish an advisory board composed of five representatives of the tribal and IIM account holders, of which two shall be representatives of the IIM account holders. The Advisory Committee shall be exempt from the requirements of the Federal Advisory Committee Act [5 U.S.C.A. App 2].

Section ___ Technical Assistance

The Authority shall provide technical assistance to tribes that wish to assume administration of their tribal and IIM trust functions pursuant to the Indian Self-determination Act and the Indian Self-Governance Act.

Section __ Termination

The Authority shall terminate 90 days after it has notified the Congress that the Indian trust systems have been fully reformed and are in full compliance with trust standards.

Section __ Office of Indian Trust Regulation.

(a) Establishment.-- Upon termination of the Authority, the Chairman of the Federal Housing Finance Board shall establish an Office of Indian Trust Management Regulation within the Federal Housing Finance Board. The Office shall employ an executive director, a general counsel and such other staff and consultants as the Chairman deems necessary, consistent with the budget limitations imposed by subsection (d) of this section.

(b) On-going Examination of the Indian Trust Systems.-- The Office shall annually examine each component of the Indian Trust management system within the Departments of the Interior and the Treasury to insure said system remain in compliance with trust standards, including any component that remains in Federal trust status but the administration of which has been assumed by tribes or private entities pursuant to the provisions of this Act or the Self-determination Act and Self-governance Act. The Office shall submit an annual report to the Secretaries setting out the results of its examination. A copy of said annual report should also be provided to the Chairmen of the Senate Committee on Indian Affairs, the House Resources Committee and the

Subcommittees on Interior and Related Agencies of the House and Senate Appropriations Committees.

(c) **Remedial Action.**-- If the Office determines that any component of the system is failing to comply with trust standards, it shall immediately notify the appropriate Secretary. If the problem is not corrected within such reasonable time as is established by the Office, the Office may file suit in Federal District Court and may, among possible requests for relief, request that the Court order the removal of responsibility for that component from that Department. If the component affects a single tribe and the Court finds for the Office and grants the Office's request to remove the function from that Department, the Court shall first offer the tribe the opportunity to assume management of that component. If the tribe does not wish to assume such management, or if it affects more than one tribe, the Court shall instruct the Office to delegate management of that function to a private entity that will be subject to examination by the Office. If the component is being administered by a tribe or private entity, the Office shall propose such remedy as it deems appropriate. Any action taken by the Office or a Court pursuant to this subsection shall in no way diminish the Federal trust status of the functions at issue. Copies of all notifications and court orders pursuant to this subsection shall be sent to the Chairmen of the Senate Committee on Indian Affairs, the House Resources Committee and to the Subcommittees on Interior and Related Agencies Appropriations Committees on Interior and Related Agencies.

(d) **Funding for the Office of Indian Trust Management Regulation.** --The Office shall assess the Department of the Interior for the costs the Office incurs in the examination of the Indian trust management functions pursuant to this Section by submitting monthly invoices to the Secretary of the Interior; provided that, the costs may not exceed _% of the amounts appropriated for the management of the Indian trust systems. The Secretary of the Interior shall pay said invoices within 21 days of receipt. If the Secretary disagrees with any element of the invoice, he shall pay it and then submit the matter to the General Accounting Office for resolution.