

Cobell vs. Salazar/Indian Land Consolidation Program: The Buy Back Program

Note: the following text uses “reservation” to mean all Indian lands, including Oklahoma Tribal Statistical Areas; “Buy Back” is used for the Buy Back Program of the Indian Trust Land Consolidation Program.

A major part of the Cobell Settlement in 2012 was the creation of the Indian Land Consolidation Program, which in turn created the Buy Back Program. Buy Back has \$1,770,000,000 to buy lands owned by tribal members that the BIA will then return to the tribe of which the seller is a citizen. When the Dawes Act of 1887 gave allotments of lands that had formerly been held in common by all tribal members to individual owners it created the problem of “fractionated” lands. Fractionated lands are lands that were inherited by descendants of the original owner. These descendants became “tenants in common” of that land, which means that an allotment of what may have originally been 360 acres became an allotment of 2.5 acres or less after a hundred years. The more individuals there have been in a family, the greater the degree of fractionation exists. It’s hard to do anything with such a small piece of land to make money. Buy Back will return these lands to the tribe to be held in common, and it will then be possible for the tribe to generate income for its citizens through economic development, such as natural oil and gas extraction, and farming and ranching.

- Definitions: a “land tract” is a parcel of land owned by an owner; a “fractionated tract” is a parcel of land owned by multiple owners, from a few to many.
- The Buy Back Program is part of the Cobell Settlement that was approved by Congress on November 24, 2012. It puts \$1.9 billion in a **Trust Land Consolidation Fund** for buying highly fractionated land—which means multiple to many owners of one piece of land—for tribes from individuals willing to sell their land to their tribes. This money must be expended by the end of the 10 year period that ends on November 24, 2022. The *Initial Implementation Plan*, based on tribal consultations that began in 2011 and initial planning, is underway. Find this plan at www.doi.gov/buybackprogram/upload/Initial-Implementation-Plan-508.pdf
- History: the fractionation of Indian lands is a result of the General Allotment Act of 1887, the Dawes Act, which allowed tribal lands to be allotted to individual tribal members in 80- or 160-acre parcels. As lands were inherited over the generations they became fractionated. The number of fractional land interests grew by 12.5% just from 2007 to 2011. It had been hoped that the prior American Indian Probate Reform Act of 2004 would slow the growth of fractionation more than it did.
- There are approximately 150 reservations with 2.9 million fractional land interests owned by 219,000+ individuals—the location of about 18% of the landowners is currently unknown—that will participate in the Buy Back Program. 90% of the purchasable fractional interests are located within 40 of the 150 reservations that have purchasable fractional interests. Buy Back will focus on these 40 reservations first, then second within the highest ranked reservations in that list, and then third on acquisitions that best reduce fractionation and promote economic development for their tribe. Oklahoma has 7,237 fractionated tracts with a total of 564,272 acres in BIA’s Southern Plains Region, and 5,088 fractionated tracts with a total of 320,593 acres in BIA’s Eastern Oklahoma Region. In this list of 40 top reservations there are 5 Oklahoma tribes –

From “Table 1 – For Illustrative Purposes – Subject to Change,” *Initial Implementation Plan*
National rankings:

#20 – Chickasaw Nation, tracts: 1,882, acres: 111,219

#22 – Cheyenne/Arapaho, tracts: 1,129, acres: 96,787

#31 – Seminole, tracts: 952, acres: 37,627

#34 – Ponca, tracts: 403, acres: 20,882

#36 – Muscogee (Creek), tracts: 780, acres: 45,130

#37 – Osage, tracts: 609, acres: 73,434

- The amount of this \$1.9 billion that will go to the top 40 ranked reservations is \$1,770,000,000. The amount of money that will go to reservations not in the top 40 list is \$130,000,000.
- After identifying the tracts to buy Buy Back will create pilot programs in a location for limited periods of time, buy lands, then move on to the next location. At each pilot location they will conduct initial land consolidation efforts in an attempt to get the most return on investment for the tribes. In the BIA's words they will target fractionated tracts that are "amenable to cost-efficient, mass valuation techniques" (p. 2 of *Initial Implementation Plan*). Some monies from these sales will go into scholarships to American Indian students.
- Buy Back, working with tribes, is creating maps that show fractionated tract boundaries and ownership status. Most fractionated tracts, interests, and acres are in the Great Plains and Rocky Mountain regions. Buy Back claims that they will "actively consult with Indian Tribes to identify and accommodate acquisition priorities to the fullest extent possible" to target the tribe's priorities.
- Buy Back will use flexible purchase ceilings to maximize the purchase of fractionated lands.
- Buy Back hopes to be able to get most of this work done in the first four years of the program.
- No more than \$285,000,000 can be used for Buy Back administrative costs. This would be 15% of the \$1.9 billion.
- Buy Back isn't sure how many of the 219,000 individual owners will want to sell since all sales are voluntary.
- After the initial work on the 40 targeted reservations Buy Back will have about \$130,000,000 left to buy fractional interests at other reservations. Buy Back doesn't plan to target all less-fractionated reservations, but the most promising in regard to return on investment to tribes while also trying to keeping their administrative costs low. Among the factors that Buy Back will consider at this stage will be: 1) the number of interested sellers in a tribe; if 50% + of the owners of fractional interests within a tribe are interested in selling, those lands get priority treatment; 2) fractional lands that have higher percentages of owners aged 65+ who identify themselves as interested sellers get priority treatment; and 3) fractional lands that are 10% or more of the area of a tract will get priority treatment.
- In their Cooperative Agreements with tribes Buy Back will give preference to tribes that have demonstrated an ability for self-governance through their participation in such programs as the BIA's Self-Governance program and the Indian Health Service's Direct Services program. Tribes that use the TAAMS (Trust Asset and Accounting Management System) and have certified staff will also get preference. Tribes that meet these criteria will be given preference within the list of top 40 reservations, and then other tribes that meet the criteria will be given preference for the additional \$130,000,000 funding.
- In their Cooperative Agreements with tribes Buy Back will meet with tribes to discuss tribal priorities for acquisition, how to contact individuals on tribal lands who own fractionated tracts of land, and to determine a tribe's ability to conduct the Buy Back program on their reservation.
- The four stages of the program are:
 1. *Outreach* to contact landowners
 2. *Land research* to determine fair market value
 3. *Valuation* using "mass-valuation" techniques
 4. *Acquisition* sending Application Packets to landowners
- Field operations will be conducted for Oklahoma out of the Albuquerque office. The other centers are in Billings, Montana and Aberdeen, South Dakota. They will be called *Acquisition Centers*.

Websites and Online Tools

- Where a tribal member can update their IIM (Individual Indian Money) account information? Contact the Garden City Group (GCG), which is the claims administrator for the Cobell Settlement at 1-800-961-6109. GCG is handling only questions about payments, and updating IIM account information.
For all other questions ask the Trust Beneficiary Call Center at 1-888-678-6836 or your nearest Fiduciary Trust Officer at www.doi.gov/ost/fto/index.cfm
Oklahoma: www.doi.gov/ost/fto/ftoRegions.cfm#1
- The Office of the Special Trustee for American Indians (OST) of the BIA is trying to find the current addresses for IIM accounts holders. In this website you can search by a name or use an A-Z list of names that OST needs current addresses for – www.doi.gov/ost/wau/index.cfm
- Garden City Group - www.indiantrust.com/
- FAQs from IndianTrust.com - www.indiantrust.com/faq
- Cobell vs. Salazar Court Documents - www.indiantrust.com/documents
- BIA – *FAQs about Cobell Settlement Payments*
- BIA - *Indian Land Consolidation Program* - www.bia.gov/WhoWeAre/BIA/ILCA/index.htm
Includes information about how payments could adversely affect the seller's benefits from these federal programs: General Assistance, TANF, Social Security benefits, SSI benefits, and VA benefits.
- BIA – *Land Buy-Back Program for Tribal Nations* - www.bia.gov/WhoWeAre/BIA/ILCA/index.htm
Includes the very important *Initial Implementation Plan; Land Buy-Back Program for Tribal Nations* that outlines how Buy Back will operate for through the termination of the program. Also includes the transcripts of the Tribal Consultations, including the full 167p. transcript of the Oklahoma City consultation.
- DOI – National Commission on Indian Trust Administration and Reform - www.doi.gov/cobell/commission/index.cfm
Commission meetings, including documents, presentations, summaries of comments, statements from Commissioners, etc. - www.doi.gov/cobell/commission/itc2012.cfm

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