



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUN 26 2015

The Honorable Don Young
Chairman, House Natural Resources
Subcommittee on Indian, Insular, and Alaska Native Affairs
Washington, DC 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Office of the Special Trustee to questions received by Vincent Logan, Special Trustee for American Indians, following the April 14, 2015, hearing before your Subcommittee on H.R. 812, *The Indian Trust Asset Reform Act*.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosure

cc: The Honorable Raul Ruiz
Ranking Member

H.R. 812

- 1. The Department's written testimony states on page seven, "Title III of the legislation would, among other things, restructure the BIA, the office of the Assistant Secretary – Indian Affairs and OST, and create an Under Secretary for Indian Affairs." It is unclear which provision in H.R. 812 purports to restructure the Bureau of Indian Affairs, Assistant Secretary-Indian Affairs, or the Office of the Special Trustee for American Indians.**

Question: If H.R. 812 were to become law as introduced, what specific sections of H.R. 812—other than Section 305(a), which requires the Secretary to ensure unified administration of appraisals and valuations within 18 months of enactment—would effectuate a restructuring of each of these entities?

Answer: Title III of H.R. 812 is titled "Restructuring Office of the Special Trustee." If H.R. 812 was enacted and Title III became law, section 304 would require that the Secretary prepare, consult with tribes on, and subsequently submit to Congress a report that includes:

- identification of all functions, other than the collection, management, and investment of Indian trust funds, that the Office of the Special Trustee performs, either independently or in concert with the BIA or other federal agencies, specifically those functions that affect or relate to management of non-monetary trust resources;
- a description of any functions of the Office of the Special Trustee that will be transitioned to the BIA or other bureaus or agencies within the Department, together with applicable timeframes; and
- a transition plan and timetable for the termination of the Office of the Special Trustee.

H.R. 812 mandates in section 304(a)(3) that the timetable for termination of OST be not later than 2 years after the date of the report. The termination of OST would constitute a major restructuring of the Department. As was made clear at the hearing, the Department does not support the termination of OST; for the foreseeable future, OST will need to remain as an integral part of the Indian trust system.

Moreover, if H.R. 812 was to become law, the Under Secretary position created by the bill could be established within the Department. Among other things, H.R. 812 leaves it to the Under Secretary to constitute a new structure or entity that would assume OST's functions when it is terminated, and the Under Secretary is given a broad range of discretionary authority to bring the functions performed and personnel employed by OST into the new unspecified structure. As indicated in the testimony for this hearing, any proposed change in an organizational structure must be specific and must be carefully evaluated in order to be successful. As written, H.R. 812 lacks sufficient detail to ensure that individual beneficiaries and tribes will retain the level of care they currently receive under the Department's trust management structure.

- 2. Written testimony from the Department on H.R. 812 states that the Department opposes a termination of the Office of the Special Trustee and appears to assume that H.R. 812 effectuates a restructuring of the Office of the Special Trustee for American Indians.**

However, section 304(a) of H.R. 812 only requires the Secretary of the Interior to submit a report to Congress that addresses various topics relating to the Office of the Special Trustee for American Indians and to consult with Indian country on the report. What happens to the report, if anything, is left for the Department or Congress to decide.

Question: What objections does the Department have to this reporting requirement as required under section 304(a)?

Answer: As indicated in the previous response, if enacted section 304 would require that the Secretary prepare, consult with tribes on, and subsequently submit to Congress a report that includes:

- identification of all functions, other than the collection, management, and investment of Indian trust funds, that the Office of the Special Trustee performs, either independently or in concert with the BIA or other federal agencies, specifically those functions that affect or relate to management of non-monetary trust resources;
- a description of any functions of the Office of the Special Trustee that will be transitioned to the BIA or other bureaus or agencies within the Department, together with applicable timeframes; and
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- 3. In written testimony on H.R. 812, the Department restates nearly verbatim various statements from its written testimony on H.R. 409 from the 113th Congress, about the Department's concerns about Title II of H.R. 409, allowing tribes develop individual Information Technology systems. In questions submitted for the record, from the hearing on H.R. 409, the Committee asked the Department to identify the specific provisions of H.R. 409 that would allow tribes to develop their own Information Technology systems.**

In the Department's November 10, 2014 response, the Department cited a specific subsection in Section 204 of H.R. 409 and stated, "This language in Section 204 will authorize tribes to develop and employ alternative systems, including IT systems, to

manage their trust assets.” The language that the Department cited in its November response was not included in H.R. 812 as introduced.

Question: Since this language was not included in H.R. 812, does the Department’s concern that the bill would allow tribes to develop individual Information Technology systems remain valid?

Answer: Yes, as a practical matter the Department continues to have concerns about the potential proliferation of management systems and the possibility of reverting to a previous state in which there was no system-wide uniformity. And while the language of H.R. 812 does not specifically countenance individual IT systems, as in previous versions of this bill it does not prohibit them.

Question: Does the Department have any concerns regarding the appraisal provisions set forth in Section 305 of H.R. 812?

Answer: The Department is open to discussing the provisions set forth in Sec. 305 of H.R. 812.

- 4. The committee heard testimony that providing HEARTH Act-like treatment for forest management activities would give tribes new flexibility and create jobs in the forest economy. Assistant Secretary Washburn and the Administration have publicly supported the HEARTH Act model.**

Question: Does the Administration have any concerns with extending the HEARTH Act-like treatment for forest management activities?

Answer: As stated in our testimony for this hearing, the Department supports increased tribal self-governance and self-determination and is supportive of program authority, similar to that found in the HEARTH Act, that would provide tribes with flexibility to manage their resources. A concern with the language contained in H.R. 812 is that it may transfer authority and funding for trust asset self-management without appropriately transferring the legal responsibility and liability for mismanagement. The Department has consistently maintained that there should be a linkage between control of a federal program and the liability for that program. Moreover, other issues would need to be considered, such as how the Department would effectuate the re-assumption of a program; the compatibility of systems or practices should such a re-assumption be necessary; and how program monitoring would be conducted.

- 5. The Department’s written testimony states on page seven that “before engaging in any restructuring” of OST, “the Department will need to conduct extensive tribal consultations, pursuant to Executive Order 13175... .” Mr. Logan stated in his oral statement that with regard to the American Indian Trust Fund Management Reform Act of 1994, “while contemplating a possible sun-setting of OST upon completion of its trust reform duties, the Act gave equal consideration to transforming the office into a permanent trust organization.”**

Question: To the extent that the Department has any plans to make any function of the Office of the Special Trustee permanent, does the Administration similarly intend to conduct extensive tribal consultations pursuant to Executive Order 13175 prior to such plans being implemented?

Answer: Consultation with Tribes regarding the Administration's plans and policies affecting tribal governments is a priority for the Administration. As indicated at the hearing, the Department does not support the termination of OST; for the foreseeable future, OST will need to remain as an integral part of the Indian trust system.

- 6. In accordance with the American Indian Trust Fund Management Reform Act of 1994¹, Indian tribes may withdraw their trust funds from federal supervision and invest them in securities that would garner greater rates of return.**

Question: How many tribes have exercised this option?

Answer: Ten tribes have withdrawn their funds under Reform Act authority. Six tribes have withdrawn their funds under separate authority.

Question: Has the Office of Special Trustee for American Indians consulted Indian country on the mechanics of this private investment option?

Answer: Regular and meaningful consultation and collaboration with Tribes is a touchstone of this Administration's policy with respect to Indian tribal governments. While the Reform Act, including the provisions addressed in this question, was enacted in 1994, the regulations associated with implementing these provisions (25 CFR Part 1200) were published in 1996. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, was signed and published in 2000.

¹ 25 U.S.C. §4022.