The Honorable Thad Cochran  
Chairman, Committee on Appropriations  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

This letter is to provide an update on the implementation of Title III of the Indian Trust Asset Reform Act, Pub. L. 114-178, 130 Stat. 432 (June 22, 2016) (ITARA) by the Department of the Interior (Department) and to specifically address the requirements of Section 304(a) of ITARA. As we continue a smooth transition to the next Administration, the Department has made significant progress toward actualizing the goals that Congress set forth in the legislation.

In Section 304(a), ITARA provided that, not later than 1 year after the date of enactment of the legislation, the Secretary of the Interior (Secretary) shall prepare and provide to you:

(1) an identification of all functions, other than the collection, management, and investment of Indian trust funds, that the Office of the Special Trustee performs independently or in concert with the Bureau of Indian Affairs (BIA) or other Federal agencies, specifically those functions that affect or relate to management of non-monetary trust resources;

(2) a description of any functions of the Office of the Special Trustee that will be transitioned to other bureaus or agencies within the Department prior to the termination date of the Office, as described in paragraph (3), together with the timeframes for those transfers; and

(3) a transition plan and timetable for the termination of the Office of the Special Trustee, to occur not later than 2 years after the date of submission, unless the Secretary determines that an orderly transition cannot be accomplished within 2 years, in which case the Secretary shall include—

(A) a statement of all reasons why the transition cannot be effected within that time; and

(B) an alternative date for completing the transition.

We believe strongly — as you do — in the value of government-to-government consultation. The Department held 10 tribal consultation sessions and one listening session located throughout Indian Country (including one session conducted over the phone) and held an open period to solicit comments via a notice in the Federal Register. It is important to note that although
government-to-government consultations as required by ITARA were conducted, individual beneficiaries, the recipients of the majority of the Office of the Special Trustee for American Indians (OST) services were not specifically consulted because they, as individuals, are not considered government representatives. However, individuals, as well as tribes, attended both the consultations and listening session, and provided both verbal and written feedback. All comments received by the Department, whether from a tribe or an individual, were analyzed and considered in the preparation of this transmission.

In addition to Section 304, the Department also consulted on Sections 303 and 305 of ITARA. Section 303 authorizes the Secretary, at her/his discretion, to establish an Under Secretary for Indian Affairs. With respect to Section 303, I defer to the next Secretary of the Interior to determine what leadership structure will best serve Indian beneficiaries. I note, however, that there is an overlap in responsibilities that exists between the Special Trustee as defined in the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. §4001) (1994 Reform Act) and the Under Secretary position as set forth in Section 303 of ITARA. In my view, this overlap would need to be clarified and reconciled in order to establish an Under Secretary position so that, at a minimum, efficient and clear lines of responsibility are maintained within the Department’s senior leadership. You have my commitment that the feedback we received responsive to this section will be provided in full to the new Administration.

Section 304(a)(1)

During the consultation sessions, the Department provided a presentation summarizing the requirements set forth in ITARA and a description of OST’s functions before inviting participants to provide verbal comments and ask questions. Included in this transmission and responsive to ITARA Section 304(a)(1), is the description of OST functions provided to Indian Country and used at the Department’s consultations and listening session.

While the Department did not present detailed options for the potential transition of specific Departmental trust functions during consultation, or for the comment period (so as not to be perceived as influencing participants’ opinions), we did solicit and receive comments regarding OST’s future role as part of the consultation process. In addition, we welcomed feedback from the public on what improvements, if any, the Department and OST could make to fulfill its promise of an enduring commitment to the best, most effective delivery of services to the beneficiaries, both tribal and individual.

The comments provided by tribal representatives and affiliated members provided a variety of views on the future of OST’s trust management functions. However, there was widespread support for the continued facilitation of the functions performed by OST: 1) providing superior fiduciary trust management; 2) continued advancement of government-to-government relations with federally recognized Indian tribes; 3) maintaining effective historical accounting and support of dispute resolution and litigation; and 4) the protection and stewardship of beneficiary trust assets.
Section 304(a)(2)

Based upon the comments received, we considered a number of options for the future of OST’s functions, which were each assessed on two levels: organizationally and functionally. These options included:

1) Retaining OST trust management functions and reform functions together, as is in their current place on the Departmental organizational chart consistent with the prioritization of Native American issues within the Department;

2) Separating OST trust management functions and reform functions into two independent entities while retaining their current places on the organizational chart consistent with the prioritization of Native American issues within the Department while allowing the reform functions of the Special Trustee to continue separately until reforms are deemed complete;

3) Transitioning OST trust management functions into the Office of the Assistant Secretary – Indian Affairs as a separate and independent office while keeping the reform functions with the Special Trustee until reforms are deemed complete;

4) Transitioning OST trust management functions into BIA while keeping the reform functions with the Special Trustee until reforms are deemed complete; and

5) Transitioning OST trust management functions piecemeal throughout the Department while keeping the reform functions with the Special Trustee until reforms are deemed complete.

Based on the feedback we received, our in-depth analysis, and the ongoing applicability of the 1994 Reform Act, I am continuing the operation of OST as a single entity within the Office of the Secretary.\(^1\) It is crucial to ensure that the segregated fiduciary model continues to be implemented in Indian Country and that the functions of OST are preserved as an independent entity. Furthermore, the Department recognizes that maintaining an office dedicated to trust reform/oversight has resulted in significant strides in the Department’s trust management and delivery of services to Indian Country.\(^2\) Maintaining this structure will help ensure that trust

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\(^1\) This recommendation is consistent with the largest plurality of comments during consultation (43%) that OST should remain intact.

\(^2\) For example: 1) management of approximately $20 billion in trust funds and funds flowing through trust accounts since 1996; 2) establishment of independent annual audits since 1996; 3) establishment and management of a comprehensive risk management program through which Indian trust funds are subject to sound internal controls that promote efficiency and accountability; 4) processing of approximately 10.3 million financial transactions with 99.99% accuracy; 5) investment of approximately $5 billion in trust fund assets to help meet the needs and objectives of tribal and individual Indian beneficiaries in FY 16; 6) management of revenues from approximately 56 million surface acres and 57 million acres of subsurface mineral estate held in trust for Indian tribes and beneficiaries; 7) retention and handling of more than 1.7 million calls nationwide to date assisting beneficiaries; 8) response to 195,528 beneficiary contacts at the Trust Beneficiary Call Center (TBCC) and achievement of an overall first-line resolution rate of 98.5% in Fiscal Year 2016; 9) establishment of Regional Trust Administrators (RTAs) and Fiduciary Trust Officers (FTOs) to provide personalized fiduciary trust management services to beneficiaries;
reform, oversight, and improvement continues to be a vital component of the Secretary’s discharge of trust responsibilities. This decision allows OST’s processes and organizational efficiency to remain the same, resulting in minimal disruptions and losses of efficiency.

Consistent with my decision, I am not directing the transfer of any functions of the OST to other bureaus or agencies; nor am I directing the development of a transition plan for the termination of the OST. While the analysis done pursuant to Section 304(a)(2) demonstrated some value in transitioning OST and its intact functions within the Office of the Assistant-Secretary – Indian Affairs, that option appears to be very difficult given the ongoing applicability of the 1994 Reform Act.

Separately, in addressing the requirements in Section 305(a), which requires that the Secretary ensure that appraisals and valuations of Indian trust property be administered by a single bureau, entity, agency, or other administrative entity within the Department not later than 18 months from the date of enactment of ITARA, the Department also systematically assessed options for the future of the appraisal and valuation functions of Indian trust property.

Under the current organizational structure, three separate and distinct Department offices contribute values to Indian trust property appraisals. The Office of Appraisal Services (OAS), located within OST, is the designated office for completing all surface appraisals of Indian real property. The Division of Minerals Evaluations, located within the Office of Valuation Services, and the Forestry Division, within the BIA, also contribute values to OAS’s surface appraisals, as necessary. Based on consultation comments, organizational considerations, and the Department’s ability to carry out appraisals and valuations of Indian trust property, I have determined that OAS could move—as a single entity—to a different office within the Department. Further analysis and a transition plan for OAS should be developed by the next Administration in collaboration with your Committee’s oversight to ensure that efficiencies are maintained, and that beneficiary services are impacted as minimally as possible.

Section 304(a)(3)

Section 304(a)(3) requires that a transition plan and timetable for the termination of OST be developed. In accordance with the 1994 Reform Act, which is specifically unaffected by ITARA, OST will terminate only after the Special Trustee determines that reforms have been

10) collection, safeguarding, and protection of more than 7.4 million pages of Indian trust documents; 11) direction of over 545 trust examinations and 624 Indian trust records assessments; and 12) providing detailed beneficiary accounts statements (electronically and via mail) to tribes (monthly) and individuals (quarterly). Please see the OST Annual Report Fiscal Year 2016 for further information concerning OST.

Valuations are also done for transactions other than surface appraisals, e.g., to support an oil or gas lease. For non-surface appraisal valuations, OAS does not contribute to the valuation.

Should the next Administration make a determination to move OAS, or other OST functions, the Department will update Congress on the status of the cost savings and possible management efficiencies achieved, if any, in accordance with Section 306. All of the responsive feedback received to date will be available for the next Administration to consider in conjunction with any additional comment received as a result of further discussion.

“Nothing in this section or the submission required by this section (1) shall cause the Office of the Special Trustee to terminate or (2) affect the application of sections 302 and 303 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4042 and 4043).” ITARA Section 304(c). The Office of the Special Trustee for American Indians, Section 302 of the 1994 Reform Act states that the Special Trustee "shall report directly to the
completed. 25 U.S.C. § 4042. The next Secretary and the Special Trustee should therefore examine what reforms remain to be accomplished in service to Indian beneficiaries and provide responsive information to your Committee. If identified reforms cannot be completed within the 2-year timeframe provided by ITARA, the new Secretary and Special Trustee will inform Congress and provide an alternative date in accordance with ITARA.

Conclusion

In finalizing the implementation of ITARA, the next Administration has a tremendous opportunity to build upon the excellent work conducted by OST in service to Indian tribes and individual beneficiaries. Of the highest importance is the need to institutionalize trust reforms to ensure adherence to the strictest fiduciary standards. The highest standard of care required of a trustee demands more than a one-time re-engineering and implementation process. To uphold the Federal Government’s trust responsibility, it is necessary to continuously review, evaluate, improve, and strengthen the administration of the Indian trust to keep pace with new business processes, systems, and technology. If staff is not dedicated to regularly reviewing and continually update processes, policies, procedures, and systems, trust business practices will very quickly become outdated, and the systems will not keep pace with current business needs. Management of the Indian trust must be supported by a structure that ensures tribes and individual Indians have, at a minimum, the same or better services and benefits than exist under the current structure. The Department has made tremendous gains in the administration and management of the Indian trust over the past 20 years and needs to build on that achievement.

Similar letters have been sent to the Chairman and Ranking Member of the Senate Committee on Appropriations, the Chairman and Ranking Member of the House Committee on Appropriations, the Chairman and Ranking Member of the Senate Committee on Indian Affairs, and the Chairman and Ranking Member of the House Committee on Natural Resources.

Sincerely,

Sally Jewell

Enclosure

"Secretary." 25 U.S.C. 4042(a). Therefore, the Special Trustee’s position in the Department cannot be moved elsewhere without further legislation. Likewise, any duty specifically granted to the Special Trustee in the Reform Act must remain with the Special Trustee. The Special Trustee’s duties enumerated in the 1994 Reform Act are: preparation of a Comprehensive Strategic Plan (Sec. 303(a)); general oversight of reform efforts (Sec. 303(b)); coordination of policies, procedures, practices, and systems related to the discharge of the Secretary’s trust responsibilities (Sec. 303(c)); problem resolution (Sec. 303(d)); and preparation of an Annual Report to Congress regarding the implementation of reforms (Sec. 303(f)). The Reform Act also grants the Special Trustee authority to access records and employees as necessary for the accomplishment of his duties. (Sec. 303(e)). Since Sec. 304(c) of ITARA states that nothing in this section shall affect the application of sections 302 and 303 of the Reform Act, these provisions remain in effect.
OST
Trust Functions

Management, Collection, and Investment of Indian Trust Funds
- Investing
- Accounting
- Receipting
- Disbursing
- Lockbox Management
- Reporting and Reconciliation
- Historical Accounting
- Risk Management
- Technical Assistance and Training

Interrelated Functions
- Trust Reform (*)
- Oversight (*)
- Self Determination Services
- Congressional Liaison / Communication / Tribal Consultation
- Beneficiary Advocacy and Outreach (*)
- Information Resources
- Program Support (e.g. Budget, Finance, Ethics, etc.)
- Litigation Support (*)
- Trust Evaluations (*)
- Trust Records Management (*)

Management of Non-Monetary Trust Resources
- Appraisal Services (Surface)

(*) Denotes function that impacts other DOI offices/bureaus or Indian tribes.