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Implementation of the Indian Trust Asset Reform Act

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National Congress of American Indians

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Overview

- **Indian Trust Asset Reform Act**
 - H.R. 812 (and S.383)
 - President Obama signed into law on June 22, 2016
 - Pub. L. 114-178
- **As signed into law, H.R. 812 is:**
 - (1) entirely voluntary for tribes and beneficiaries
 - (2) does not impose restructuring on DOI, BIA, or OST
 - (3) does not “sunset” or terminate OST

Pub. L. 114-178, the “ITARA”

- Contains three titles
 - I. Recognition of Trust Responsibility
 - II. Indian Trust Asset Management Demonstration Project
 - III. Improving Efficiency and Streamlining Processes
- DOI consulted on title III in August and September

Title II: Indian Trust Asset Demonstration Project

- Authorizes tribes to submit trust asset management plans to the Secretary that will guide federal or tribal management
- Secretary must act within 120 days of submission
- Secretary shall approve unless proposed plan:
 - (1) fails to include the application requirements
 - (2) violates treaties, statutes, or Executive orders that are applicable to the trust assets; or
 - (3) the cost of implementing plan exceeds available federal funding
- Management plans can waive federal regulations
- 10 year demo project can be extended by Secretary
- No limit on number of participating tribes

Title III: Improving Efficiency and Streamlining Processes

- Authorizes Secretary to establish an Under Secretary for Indian Affairs
 - Would report directly to the Secretary
 - “Supervise and coordinate activities and policies of the BIA with activities and policies of” non-BIA agencies and bureaus within DOI
 - Intended to ensure that other parts of DOI cannot implement policies that negatively affect tribes and beneficiaries without Indian Affairs knowing about it early
- Once position established, appointed by President with advice and consent of Senate

The Under Secretary and the Next Administration

- Written comment deadline was last Friday, Oct. 7
- ATNI-NCAI submitted joint comments
 - Establish Under Secretary now so next Administration can appoint
 - Circulate draft Dept. Manual provisions on authority of new position
 - Authority over non-BIA agencies and budgets
 - Designate acting Under Secretary to assist in transition
 - Include funds in FY 2018 budget request
- Flexibility in how implemented

Report to Congress on OST

- Within one year, Secretary shall consult with Indian country and submit a report to Congress that—
 - Describes OST's non-trust funds related activities
 - Includes a transition plan for OST to terminate within 2 years of submission, or an alternative date if an orderly transition cannot be done within 2 years
- The report is informational only
- Opportunity to examine OST functions and recommend where OST funding and FTEs should be located within DOI

Comments on Report to Congress

- Joint ATNI-NCAI comments asked for next Administration to prepare report
- Report on OST should—
 - Affirm that tribes can 638 any OST function
 - Keep intact and transfer \$50.7m in core fiduciary accounting and investment functions to Under Secretary
 - Would maintain separation from BIA
 - Transfer Office of Appraisal Services to AS-IA, maintain pass-through funding for Office of Hearings and Appeals
 - Transfer \$47.5m in funding and FTEs to BIA Trust Services
 - Natural resources, realty, and rights protection

Appraisals and Valuations

- Section 305(a): Within 18 months, the Secretary “shall ensure that appraisals and valuations of Indian trust property are administered by a single bureau, agency, or other administrative entity within the Department.”
- Section 305(b): When a tribe or Indian beneficiary submits an appraisal that satisfies minimum standards—
 - no further Secretarial review or approval is required, and
 - the appraisal is considered final for purposes of effectuating the transaction for which it was required
 - Eliminates requirement for review appraisal
- Proposed Rule on minimum appraisal standards published in *Federal Register*
 - Comments due November 21, 2016

Thoughts and Observations

- Under Secretary provides a new opportunity for Indian country in the next Administration
- Report on OST will be important document and shouldn't be rushed out the door
- Important for Indian country to keep pressure on current Administration and engage the transition team

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