



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 22 2024

The Honorable Harriet M. Hageman
Chair
Subcommittee on Indian and Insular Affairs
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Chair Hageman:

Enclosed are responses to questions for the record submitted to the Department's witness, Heather Dawn Thompson, Acting Deputy Assistant Secretary for Indian Affairs, following her appearance before your Subcommittee at a legislative hearing on July 12, 2023. These responses were prepared by the Bureau of Indian Affairs.

Thank you for the opportunity to respond to you on these matters.

Sincerely,

Pamela L Barkin
Acting Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Teresa Leger Fernández
Ranking Member

Questions for the Record
U.S. House Committee on Natural Resources
Subcommittee on Indian and Insular Affairs
Legislative Hearing on H.R. 929, H.R. 2882, and H.R. 3579
July 12, 2023

Questions from Chairman Westerman

Question 1: Regarding H.R. 2882, one of the four non-appointed board members to the Udall Foundation includes, by statute, the Secretary of Interior, or one of their designees. Currently, Assistant Secretary Bryan Newland, the Assistant Secretary- Indian Affairs, serves on the board.

- a. Please elaborate on the specific role that Mr. Newland has as a board trustee.**
- b. Please expand on what the Department's strategy is towards the Udall Foundation noting the responsibility and jurisdiction you hold by being on the board.**

Response: Assistant Secretary Newland has served as a voting ex officio member of the Udall Foundation Board of Trustees (Board) as Secretary Haaland's designee since 2022. The Board is responsible for the supervision and direction of the Udall Foundation. As such, it is the Board's role and duty to appoint the Executive Director; fix the compensation of the Executive Director and up to four additional senior management personnel; approve the organizational structure of the Udall Foundation; approve the Udall Foundation's annual budget; receive the findings of an annual external financial audit; set policies, including internal controls, for the conduct and management of the agency's finances, personnel, and programs to be implemented by staff; and approve the strategic directions and priorities for the Udall Foundation (*see*: <https://udall.gov/documents/AboutUs/UFBoardOPsAdopted4-11October2023-FINAL11-13-23withappendices.pdf>).

Assistant Secretary Newland, as an alumnus of the Udall Foundation's Native American Congressional Internship Program, personally appreciates the positive effect the Foundation has had in Indian Country. During this Administration, Indian Affairs has hosted Udall Foundation interns each summer to help strengthen future Native leadership across Indian Country. The Department of the Interior (Department) also recognizes the important role the Udall Foundation has in helping to resolve environmental, public lands, and natural resources conflicts and providing evidence-based policy advice in these areas. The Department, through its representation on the Board, is committed to making progress in these key issue areas by using its expertise to inform strategic direction and priorities as well as doing its part to ensure the Foundation operates effectively and efficiently.

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Question 2: Regarding H.R. 3579, the Department's testimony states the Department supports the intent, but not H.R. 3579 itself.

- a. Can you go into detail on how the Department thinks that the goals of this legislation can benefit tribes?**
- b. What further accountability measures do you think would be helpful to ensure that the BIA meets these mortgage approval timelines that already exist?**

Response: The Department shares Congress' goals to improve the processing of mortgage applications and create more housing availability in Indian Country. American Indians and Alaska Natives (AI/ANs) have historically experienced challenges in securing home mortgages due to a lack of experience by lenders in dealing with AI/ANs, the unique land ownership in Indian Country, and the limited experience of AI/ANs in dealing with financial institutions. Because of these challenges, Tribal landowners may rely on the Bureau of Indian Affairs (BIA) for guidance, counseling, and assistance in their mortgage negotiations. H.R. 3579 would create the Realty Ombudsman position, which would complement existing BIA efforts to aid in the processing of mortgages as the Realty Ombudsman would serve as a liaison to Federal partners and as an intermediary between interested parties to address questions and help to resolve complaints.

As stated, the Department is working to improve the processing, tracking, and reporting of mortgage applications and has made this a priority within the BIA. In October 2023, the Government Accountability Office (GAO) issued a report titled, *Tribal Issues: Bureau of Indian Affairs Should Take Additional Steps to Improve Timely Delivery of Real Estate Services* (GAO-24-105875). This report identified Tribal needs concerning digitization and technology improvements that can further streamline the mortgage process and provide enhanced reporting mechanisms. Specifically, the GAO study highlighted room for improvement within the Trust Asset and Accounting Management System (TAAMS) that, if implemented, would aid the BIA in meeting regulatory and internal deadlines for realty processing activities, including those necessary to complete mortgage applications. The BIA has been working to improve TAAMS to add additional functions to improve collaboration among BIA divisions. The BIA is also evaluating adding capabilities to TAAMS that would allow for better monitoring of realty applications, which will aid in identifying areas that may need more staffing to meet internal and regulatory timelines.

The Department's goal is to implement system enhancements to TAAMS for a mortgage module that would enhance accountability, tracking, and reporting of existing timelines. The system enhancement will include a public facing dashboard that will provide lenders information on mortgage statuses. Once the TAAMS mortgage module and portal are completed and ready for implementation, BIA will provide necessary updates to the Mortgage Handbook, create a TAAMS Mortgage Module Business Rules, and implement training for BIA, Tribal ISDEAA contract and/or compact staff, Tribes, individual applicants, and lenders.

The enhancement of TAAMS will aid in BIA's evaluation and streamlining of its mortgage process. The Department notes that while H.R. 3579 would create statutory timelines to process mortgages and the BIA has worked to improve internal processing timelines through prioritizing realty processes related to mortgages, other key barriers, such as resource levels, continue to exist. The Department emphasizes again that we share Congress' goal of improving homeownership in Indian Country, but accountability measures are only one piece of a solution.

Question 3: The Department's testimony states the Department has concerns with H.R. 3579 related to privacy, because the legislation mandates read-only access to the Bureau's Trust Asset and Accounting Management system, or TAAMS. However, during the hearing, you mentioned that you are not objecting to read-only access for TAAMS, just that that the read-only access of non-Bureau entities should be more limited to protect personal identifying information.

- a. What legislative language do you propose to meet this goal?**
- b. Are there other aspects of TAAMS needs to be updated to ensure privacy compliance and would assist in meeting private industry standards of best practices for mortgage applications?**

Response: The Department does not object to our vital teammates in homeownership receiving updates to the relevant land data that is stored in TAAMS. However, TAAMS contains information beyond what is necessary to process mortgage applications and full access raises privacy and security issues. TAAMS contains valuable and protected information of Indian lands and landowners, as well as information concerning processing fee to trust applications, Indian probates, and other realty transactions. Consequently, the Department recommends limited access to only the subcategory of data in TAAMS that is relevant to mortgages applications. At the request of the sponsor and Subcommittee, the Department provided technical assistance to achieve this goal by suggesting the bill provide only for access to necessary information through a portal and not to TAAMS directly. This suggestion aligns with the BIA's TAAMS mortgage module in development, which will allow Tribes, individual applicants, and lenders to track the status of a pending mortgage application(s). The BIA continues to develop the TAAMS mortgage module and assess what capabilities should be available such as the ability to request Title Status Reports (TSRs) online through the portal.

However, even with the limited access to relevant data, the Department would still require training and certification on safeguarding sensitive information to access any TAAMS data through the portal. Further, access to an individual mortgage application would be granted only to those who received the current landowner's consent and who have applied for a mortgage. It is important for the Department to ensure critical responsibility of securing personal identifiable information (PII) in TAAMS. Lending companies, Tribes, and employees who request access to the TAAMS Mortgage Portal data and who then violate their privacy access permissions would be subject to the consequences associated with the release of PII.

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Questions from Ranking Member Grijalva

Question 1: Does the Bureau of Indian Affairs have a process in place to track legacy pollution and the parties responsible for that pollution?

Response: The Department hosts the Environmental Disposal and Liability database that tracks pollution and compliance at BIA facilities. BIA completes quarterly updates on these facilities. The Department has several other databases, including the Damage Assessment and Restoration Tracking System for natural resource damage assessments, that the BIA uses to track pollution and its causes.

Question 2: What factors are considered when determining the costs of remediation should be borne by a tribe, the federal government, or other involved parties?

Response: It is the Department's policy to minimize its exposure to potential liability and remediation costs by avoiding acquiring real property that is contaminated unless directed by Congress, court mandate, or as determined by the Secretary. (See 602 Departmental Manual 2). Additionally, 602 Departmental Manual 2 describes the Department's process for preserving defenses to liability through Environmental Site Assessments prior to acquisition. In compliance with this policy, the applicant is responsible to provide the Phase I Environmental Site Assessment, and if necessary, a Phase II Environmental Site Assessment to determine the costs of remediation. If resources allow, the BIA may conduct the Phase I Environmental Site Assessment. In some cases, the costs of remediation are prohibitive for the Tribe or applicant. The results of the Phase I assessment and costs of remediation are factored into the decision whether to acquire the property. The BIA will coordinate with the applicant to ensure they understand the results of any remediation or contamination identified.

The responsibilities and functions prescribed in 602 Departmental Manual 2 are intended to ensure that each Bureau or Office, prior to the acquisition of real property, determines the associated liabilities and potential remediation costs that could result from the presence, extent and/or release of hazardous substances, oil, petroleum products, or environmental issues of concern. Such determinations must be considered in any decision to acquire real property and must be taken into account when establishing the total cost of acquisition. Determinations about potentially responsible parties are made in consultation with the Solicitor's Office and require additional inquiry and analysis.

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Questions from Representative Leger Fernández

Question 1: Ms. Thompson, your testimony stated, “the Department has previously advised the Puyallup Tribe that congressional action to transfer the Pierce County Tribal fee lands into trust is a better option than the Department’s fee-to-trust land acquisition process due to legacy pollution identified in the environmental assessments.”

Can you expand how the BIA works with Tribes regarding fee-to-trust-acquisitions when legacy pollution is identified? If the cause or the party responsible for the legacy pollution is identified, are they liable? And what role would BIA have with the responsible party once they are identified?

Response: It is the Department’s policy to minimize its exposure to potential liability and remediation costs by avoiding acquiring real property that is contaminated unless directed by Congress, court mandate, or as determined by the Secretary. (See 602 Departmental Manual 2.) Additionally, 602 Departmental Manual 2 describes the Department’s process for preserving defenses to liability through Environmental Site Assessments prior to acquisition. In compliance with this policy, the BIA typically conducts a Phase I Environmental Site Assessment, and if necessary, a Phase II Environmental Site Assessment to determine the costs of remediation. In some cases, the costs of remediation are prohibitive for the Tribe.

Determinations about potentially responsible parties are made in consultation with the Solicitor’s Office and require additional inquiry and analysis.

Question 2: Would you please provide any changes to existing statute that would have enabled the Department to more easily place lands into trust for the tribe in this instance?

Response: A statutory authorization to allow Tribes to request the Department to waive liability would facilitate more land transfer requests from Tribes similarly situated to the Puyallup Tribe. The Department believes that in some instances the pollution is too great, such as former industrial sites where pollution has hit the groundwater sites. But in many cases, such flexibility would allow the Department to reacquire desired homelands that have been environmentally contaminated.

Question 3: Please provide legislative recommendations to improve the Department’s ability to place land into trust when legacy pollution is present while maintaining safeguards to prevent a tribe or the federal government from assuming an inappropriate level of environmental liability.

Response: The Department seeks to establish an efficient process to acquire land into trust on behalf of Tribes and individual applications. The Department can work with Congress to identify applicable statutory changes.