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May 3, 2004

The Honorable David M. Walker
Comptroller General
General Accounting Office
441 G. St. NW, Suite 7125
Washington, DC 20548

Dear Comptroller General Walker:

I am requesting an investigation into the actions of the Department of Interior's (DOI) Office of Special Trustee (OST). I seek an investigation of the entire management and administrative system including the OST's budget process and implementation. I am concerned about OST's financial transactions, its regulatory compliance, its internal controls, and the accuracy of OST's program allocation financial reporting.

Included in this letter is some background information that provides the basis of my request. I have collected additional information regarding this matter. I respectfully request that the General Accounting Office (GAO) meet with my office to discuss this further and refine this request.

OST Management's Response to Reported Deficiencies

The described GAO audit should include OST Management's response to audit deficiencies found in reports starting from FY 1996 to FY 2002. The following are just some examples of audit language findings found consistently uncorrected within past audits.

1. 1996 Report No. GAO 98-I-206 Financial Statements for OST dated January 1998: "The accounting systems and internal control procedures used by the OST and the OTFM have suffered from a variety of system and procedural internal control weaknesses and other problems; such as understaffed accounting operations at all levels, a lack of experienced accounting supervisors, a lack of minimum standards for key positions in the accounting process, inadequate training programs, and out-of-date accounting policies and procedures manuals. *Certain of these internal control weaknesses are as pervasive and fundamental as to render certain accounting systems unreliable.*" Emphasis added.
2. 1997 Report No. GAO 97-00-I-434, May 2000: "While the OTFM continues to work towards providing improved regulatory guidance and policies and procedures, consistent implementation of existing guidelines has not been achieved due to the

decentralized nature of OTFM field accounting operations, lack of personnel at certain locations, lack of line authority over certain trust functions that impact OTFM operations and inadequate information systems. The following items represent reportable conditions as of September 30, 1998, and should be addressed by the OTFM.” Emphasis added.

3. 1998 Audit Report No. GAO 00-i-434: Griffin and Associates recommended that OST implement adequate policies and procedures defining program security, physical access controls, password controls, and disaster recovery plans. Further, the report summarizes 42 internal control issues reported as early as 1995 where 27 recommendations were unimplemented as of September 30, 1998.
4. 1999 Independent Auditor’s Report on the Financial Statements for FY 1999 and 1998 for OST and Other Special Trust Funds and IIM Funds Managed by OTFM: “Griffin and Associates issued qualified opinions because cash balances were materially greater than those reported by the U.S. Treasury, major deficiencies in the accounting systems’ controls and records caused the systems to be unreliable, and certain Trust Funds’ beneficiaries disagreed with balances recorded by OTFM and had filed or were expected to file claims against OTFM. *These conditions prevented the cash and Trust Fund balances and the receipts and disbursements from being audited.* Further, a potential liability to the Federal Government existed because of the lawsuits filed over the Government’s fiduciary responsibility ... The other noncompliance issues related to the OTFM’s disclosure in its management representation letter that since Sept. 30, 1995, it had not complied with the Federal Manager’s Financial Integrity Act of 1982 and the OTFM had not followed proper delegation of authority procedures for making disbursements from accounts. Specifically, the OTFM did not assess (1) the *effectiveness of its internal control structure over safeguarding the assets against unauthorized acquisition, use, or disposition*; (2) compliance with laws and regulations; and (3) financial reporting based upon control criteria established under the Act.” Emphasis added.
5. 2000 Report No. 01-I-411 Executive Summary for FY 2000 and 1999 for OST and funds managed by OTFM: Griffin and Associates identified the following internal control weaknesses: (1) reliability of financial data provided by BIA and the continuity of service provided to OTFM’s systems department; (2) numerous work tickets to support receipts and programmed disbursements lacked one or more required signatures; (3) OTFM did not have adequate policies and procedures for changing account numbers; (4) lost interest, i.e. BIA delay for six months the transfer of \$6.3 million receipt; and (5) 21 open internal issues – 4 from the current year and 17 from prior years’ audits reports.
6. 2001 Report No. 2002-i-0018 Report on the U.S., DOI FY 2001: “We noted that the procedures and internal controls are not adequate to ensure that the Indian Trust Fund activity and balances are recorded properly or timely. We noted the following

weaknesses": (1) cash balances, i.e. "Interior is unable to reconcile the Indian Trust Fund cash balances that are disclosed in the footnotes to Interior's financial statements with the cash balances reported by the U.S. Department of the Treasury"; (2) trust fund balances, i.e. "Interior is unable to provide accounting records to properly support the Indian Trust Fund balances"; (3) special deposit accounts, i.e. "In accordance with section 25 of the C.F.R., Interior records receipts into a special deposit account within the Individual Indian Monies subsidiary ledger when the recipient trust fund account is unknown at time of receipt"; (4) trust fund information systems, i.e. "Interior has not established adequate security and general controls over the Trust Fund information systems"; (5) entering and maintaining trust fund information regarding following internal control weaknesses: segregation of duties, related party transactions, probate backlog, appraisal compacts, untimely deposits"

7. 2002, January 31 – Report No. 2003-I-0014 Independent Auditor's Report on the U.S. DOI's FY 2002 Annual Report on Performance and Accountability: "We noted that the procedures and internal controls are not adequate to ensure that the Indian Trust Fund activity and balances are recorded properly or timely. We noted the following weaknesses ... cash balances ... trust fund balances ... special deposit accounts ... trust fund information systems ... appraisal compacts ... entering and maintaining trust fund information ... segregation of duties ... probate backlog ... untimely deposits."

Budget Justifications and Performance Information (Green Book)

The Chief Financial Officers Act of 1990 was enacted to improve the efficiency and effectiveness of the federal government, provide guidance and leadership, to be accountable and provide accurate financial reporting. The Federal Managers Financial Integrity Act of 1982 provides in relevant part:

- (i) obligations and costs are in compliance with applicable law
- (ii) funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation; and
- (iii) revenues and expenditures applicable to agency operations are properly recorded and accounted for to permit the preparation of accounts and reliable information and statistical reports and to maintain accountability over the assets.

The Government Performance and Results Act of 1993 emphasizes what a program accomplishes, how well the accomplishments match with the program's purpose and objectives, and requires agencies to prepare strategic plans, annual performance plans, and annual performance reports. Part 2 of this Circular addresses the requirements of this law. These are just a few of the many federal laws protecting the public and Indian trust assets and yet their compliance is neither cared for nor enforced within OST. The GAO reports are consistent with the lack of improvements in establishing the necessary controls, not only for the trust funds, but also for the appropriated funds.

The chart below shows OST's budget requests are increasing as well as full time equivalent (FTE's) estimate's only inconsistent with the legislation described herein:

<u>Fiscal Year</u>	<u>Request</u>	<u>FTE</u>
FY 1997	34,120	288
FY 1998	39,337	310
FY 1999	42,000	340
FY 2000	90,025	346
FY 2001	109,985	401
FY 2002	100,732	412
FY 2003	140,359	495
FY 2004	170,000	660
FY 2005	322,700	679

Specifically, a review of the justification for increases in the number of increased Senior Executive Service (SES) positions and overall employee count should be scheduled.

OST Contracting Practices

The described audit should review the OST contracting deficiencies contained in the August, 2003 Contracting Study prior to OST contracting services being performed by MMS National Business Center, Denver CO and ensure OST is currently in compliance. ¹ Further, the described audit should review the following OST procedures: (1) percentage of OST appropriations being outsourced to private contractors; and (2) OST contractors familiarization/experience in carrying out trust responsibilities.

Unliquidated Obligations/Carryover

OST has demonstrated a "carryover" practice despite requesting additional appropriation each year. Further, there is a reciprocal relationship between the "unliquidated obligation amount" and the "carryover" amount where it appears that OST is attempting to mitigate the carryover by creating unliquidated obligation amounts. Hence, the OST is creating a wide array of discretionary spending inconsistent with budgetary requests. The GAO audit should analyze unliquidated obligations and OST carryover described on the Appropriation Inquiry Tables.

<u>Fiscal Year</u>	<u>Unliquidated Obligations Amount</u>	<u>Carryover Amount</u>
1997	0	0
1998	0	13,378,970.66
1999	0	20,259,708.09
2000	311,771.38	19,516,550.86
2001	2,020,913.21	38,138,648.92
2002	1,203,636.54	48,161,552.10
2003	23,250,877.90	25,713,222.43
2004	6,023,097.43	5,966,887.99

¹ MMS began performing contracting services for OST in October, 2003.

OST has increased the unliquidated obligation amount by allocating millions in funding to a wide array of unnamed vendors on the "Underlivered Orders by Spending Organizations" late in the fiscal year. There are too many year end, questionable financial obligations with cancellations in the next fiscal year that gives rise to suspicious activity of impropriety. Hence, the GAO should investigate whether the expenditures are proper and actually occurred.

OST Management Performance/Cash Awards

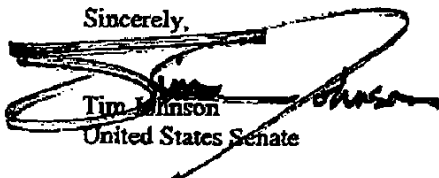
Upon review of Incentive Cash Awards Program and various Quarterly reports mandated by the Courts, Senior OST Management have received hundreds of thousands dollars in cash awards and retention bonuses for questionable performance in addition to their salary. For example, Donna Erwin has received \$41,123.68 in cash awards and \$109,367.75 in "retention" bonuses in addition to her salary during her tenure at OST. Further, this specific instance is indicative of patterns within OST. Hence, the GAO should include a report of all cash and retention bonuses for all of OST management since FY 1997.

Contracting Practices with Former OST SES Employees

OST has demonstrated a practice of contracting with former OST employees either shortly or immediately after their retirement. Hence, the GAO should review all OST contracts and determine the level of outsourcing with retired OST employees.

Please contact my staff, Danna Jackson, at (202) 224-1648 for further information. I look forward to working with you on this important matter.

Sincerely,



Tim Johnson
United States Senate