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American Indians

Policy Update

*2016 Annual
Convention &
Marketplace*

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OVERVIEW

As we enter the last months of 2016, there are only a few remaining days left in the 114th Congress and in the Obama Administration. Elections will be held in a few short weeks and with those results, Indian Country will greet a new President and the beginning of a new Congressional session in January of 2017. Even as we prepare for these transitions, work continues both administratively and Congressional on our policy agenda.

In Congress, we have seen progress with the enactment of legislation related to trust management, education, and the welfare of youth. Several legislative priorities are still active in Congress and we continue to work to ensure that tribal governments are granted parity in the Tribal Labor Sovereignty Act and that direct funding is made available to tribal governments through the Victims of Crime Act fund. We are still hopeful that House and Senate energy bills can be conferenced in a way that improves opportunities for energy development on Indian lands, and that the House will vote on the self-governance bill that has been active since the beginning of the 114th Congress.

As the Administration comes to a close, we celebrate the eight years of achievements in the Obama Presidency. From restoration of homelands to increased protections for native women, to settlement of trust cases and a strong focus on native youth through Indian Child Welfare Act guidelines and the Generation Indigenous initiative, this Administration has been a strong partner for tribal governments.

Indian Country will look to the next Administration to build on those gains and to continue the efforts of the White House Council on Native American Affairs and the White House Tribal Nations Conference so that tribes retain a meaningful seat at the table when policies are made affecting tribal governments and citizens.

But there is still time to accomplish key priorities during this Administration. Tribes continue to request an exemption from the employer shared responsibility mandate under the Affordable Care Act, the issuance of an updated Memorandum of Opinion on the scope of the federal trust responsibility to set the framework for how future Administration's interact with tribal governments, and long-term strategies to improve the chronic issues that face the Indian Health Service.

These and other recommendations for the first 100 days and the next four years of the next Administration are contained in NCAI's transition document that has been developed based on feedback from tribal leaders and our partner organizations. We are also preparing for the new Congress by putting together informational packets for new members and reexamining our legislative opportunities for next year. So, we are looking to finish this year with several remaining accomplishments while preparing for next year.

A strong and consistent voice in Washington D.C. is important as we seek to continue to influence the policies that will be created in both the Administration and in Congress. As we work together, NCAI is honored to support Indian Country's policy goals and objectives and to ensure that the voice of tribal nations are heard throughout the policymaking process.

RESTORE TRIBAL HOMELANDS – ADDRESSING THE CARCIERI DECISION

Since 1934, the Department of the Interior (DOI) has construed the Indian Reorganization Act (IRA) to authorize the Secretary of the Interior to place land into trust for all federally recognized tribes. Over the following 75 years, DOI restored lands to enable tribal governments to build schools, health clinics, hospitals, housing, and community centers to serve their people. The Secretary has approved trust acquisitions for less than 5 percent of the more than 100 million acres of lands lost through the federal policies of removal, allotment, and assimilation.

In February 2009, the U.S. Supreme Court decided *Carcieri v. Salazar*, overturning the long-standing interpretation by construing the IRA to limit the Secretary's authority to place land into trust to only those tribes that were "under federal jurisdiction" as of 1934. From this interpretation, two classes of tribes have been created—tribes "under federal jurisdiction" in 1934 and tribes that were not. This unequal treatment of federally recognized tribes runs counter to congressional intent and modern federal Indian policy. Legislation is needed to prevent irrevocable damage to tribal sovereignty, tribal culture, and the federal trust responsibility.

The *Carcieri* decision undermines tribal economic development and self-sufficiency, public safety, tribal sovereignty, and self-determination. The IRA is a comprehensive federal law that provides not only the authority of the Secretary of the Interior to take lands into trust for tribes, but also for the establishment of tribal constitutions and tribal business structures. The *Carcieri* decision has created jurisdictional uncertainty that is hindering economic development opportunities, business financing, contracts, and loans. The decision has further complicated the uncertainties of criminal jurisdiction in Indian Country such that it has worsened the public safety crisis prevailing on many Indian reservations across the country as well as drawing into question the validity of past federal and tribal court convictions. The decision also threatens to block or delay important land acquisitions for schools, housing, health clinics, essential tribal government infrastructure projects, and the protection of sacred sites.

Lawsuits based on the *Carcieri* decision have already resulted in costly, protracted litigation on a broad range of issues and will likely spawn further litigation across the country. These cases are affecting all tribes, even those that were clearly recognized by the United States prior to 1934. The United States, at taxpayer expense, is a defendant in more than a half dozen of these lawsuits. A legislative fix to *Carcieri* comes at no cost to taxpayers all while boosting economic development and self-determination in Indian Country.

Legislative Update

In July 2015 Senator Barrasso introduced S. 1879, the *Interior Improvement Act*. This bill reaffirms the Secretary's authority to take lands into trust and affirms lands already in trust. In addition, for off-reservation parcels the bill creates incentivizes for cooperative agreements between tribes and counties. The legislation makes the land in trust process more transparent and clarifies when the timeframe for notification to counties begins. This legislation incorporates the comments heard at prior hearings and a February roundtable about improving the land in trust process for tribes and local governments. S. 1879 was voted out of the Committee in December and is ready for consideration by the full Senate.

S. 1879 complements other legislation that has been introduced to address concerns raised by tribes since the 2009 Supreme Court decision. Senator Tester, Congressman Cole, and Congresswoman McCollum have all introduced legislation that would reaffirm Secretarial authority and reaffirm lands already in trust

(S. 732, H.R. 249 & H.R. 3137). In addition, two pieces of legislation have been introduced that would reaffirm the status of lands taken into trust, provided the tribe was federally-recognized on the date the lands were taken into trust. In the House, Congressman Cole introduced H.R. 3137, and in the Senate companion legislation, S. 1931, was introduced by Senator Moran in August.

In March of 2016, Senator Tester introduced S. 2636, the Reservation land Consolidation Act. This legislation streamlines the land in trust process for on-reservation parcels by making acquisition of those parcels mandatory. A hearing on this legislation was held in September 2016 and Senator Tester has expressed his interest in moving this legislation with the Interior Improvement Act should that legislation move during this session of Congress.

For additional information please contact Denise Desiderio, Policy Director, ddesiderio@ncai.org.

NATURAL RESOURCES

American Indians and Alaska Natives, as first stewards of this land, have nurtured, lived, and thrived off their homelands since time immemorial. Native peoples continue to rely on their natural resources to sustain themselves as key elements of their culture. Through the Constitution, federal laws, and various agreements with tribal nations, the federal government has treaty and trust responsibilities to Indian tribes to protect, manage, and allow access to tribes' natural resources.

Tribes' cultures, traditions, lifestyles, communities, foods, and economies are all dependent upon many natural resources and they are disappearing faster than they can be restored. These impacts are intensified by effects of climate change on tribal lands. American Indians and Alaska Natives are disproportionately impacted by climate change due to the geographical areas in which they reside and their direct connection to their surrounding environments. Native peoples who rely heavily on the cultural and subsistence practices of their ancestors to survive are particularly hard hit. Specifically, the well-established plight of those in Alaska Native villages is probably the most profound manifestation of the climate crisis and requires focused and high priority attention from the federal government.

Climate change poses threats not only to the health and food supply of Native peoples, but also to their traditional ways of life. Climate change is reducing the natural ecosystems and biodiversity on which Native peoples have come to rely. The traditional time to gather plants is changing, and the migration patterns of animals are being altered. Wildland fires on federal lands are significantly increasing in size, intensity, and cost. In California and the Southwest, many tribes are experiencing prolonged drought which is having an effect on their water resources and rights while some villages in Alaska that are located near rivers or streams now find the water at their front door.

The United States' responsibility toward tribes goes beyond simply supporting prior agreements, it must allow for full tribal participation during discussions on the management of Native resources at the federal-level and the tribal management of natural resources in traditional and culturally appropriate methods. Tribes, as proven effective managers of their own resources, must be included in federal programs as well as funding opportunities available to state and local governments.

Legislative Update

S. 3014 - Tribal Forestry Participation and Protection Act of 2016. Senator Steve Daines (R-SD) introduced S. 3014 – the Tribal Forestry Participation and Protection Act of 2016 on May 26, 2016. The legislation requires federal land management agencies to respond within 90 days to tribal requests to manage federal

forest lands and to complete analysis within two years, and permits tribes to conduct forest management activities on federal lands where they have a tribal interest. This helps create cohesive management practices throughout our forestry systems, promoting healthy forests, ecosystems, and economies.

Further, S. 3014 creates the Tribal Forest Management Demonstration Project, allowing Indian tribes and tribal organizations to contract with the Department of the Interior and U.S. Forest Service to perform administrative, management, and additional program functions pursuant to the Tribal Forest Protection Act of 2004. These contracts allow for tribally-driven management of our tribal forests, supporting the exercise of tribal self-determination and self-governance.

On June 8, 2016, the Senate Committee on Indian Affairs held a hearing on S. 3014 and reported the bill favorably out of Committee with an amendment in the nature of a substitute on June 22, 2016. This legislation is still pending as Congress is looking to address forestry and wildfire issues. There is a possibility that this bill could get attached to wildfire fire legislation, or to S. 2012 – the Energy Policy Modernization Act which is currently being conferenced by the House and Senate.

Wildfire Disaster Funding Act of 2015 (S. 235 & H.R. 167). Senator Wyden (D-OR) and Representative Simpson (R-ID) introduced companion bills to address many issues with funding wildfire suppression. Specifically they address the problematic way in which appropriated sums are often insufficient to cover the large and unpredictable costs of wildfires. As a result fire suppression funds must often be “borrowed” from regular federal forest management programs. Repayment is always late and often partial, disrupting and diminishing those programs’ effectiveness. Many times, this comes at the expense of tribal forestry programs and tribal forests.

NCAI supports the legislative initiative proposed both in Congress and by the Administration to have federal wildland fire costs that exceed 70 percent of the ten-year average paid from federal disaster assistance accounts. Such authority would allow the large, unpredictable, and often unbudgeted costs of fighting wildland fires to be treated the same as other natural disasters, and would provide more budgetary stability to regular on-going federal forest management programs. Since these bills have been introduced, they have received broad bipartisan support. To date this legislation has strong bi-partisan support -- S. 235 has 21 co-sponsors (17 Democrats and 4 Republicans) and H.R. 167 has 145 co-sponsors (83 Democrats and 67 Republicans).

Neither the House nor Senate Committees of jurisdiction have held direct legislative hearings on this legislation, but both the Senate Committee Energy and Natural Resources and House Committee on Natural Resources (which do not have direct jurisdiction because it is a funding measure) have held hearings discussing the issues of wildland fire funding and the need for reform. NCAI continues to support enactment of this legislation in the 114th Congress. As part of the Continuing Resolution passed on September 30, 2015, Congress included \$700 million in emergency funding for wildland fire suppression.

Draft Bill – Wildfire Budgeting, Response, and Forest Management Act. On June 3, 2016, Senators Lisa Murkowski (R-AK), Maria Cantwell (D-WA), Ron Wyden (D-OR), Mike Crapo (R-ID), and Jim Risch (R-ID) released a draft bill entitled Wildfire Budgeting, Response, and Forest Management Act. The draft bill includes a similar cap adjustment to end borrowing fire suppression funds from other programs to H.R. 167 and S. 235 but includes additional measures developed through hearings help by the Senate Committee on Environment and Natural Resources in the 114th Congress.

Among other things, the draft bill will: end fire borrowing by Forest Service and the Department of the Interior to enabling a transfer of limited funds through a budget cap adjustment when all appropriated suppression funding (100% of the 10-year average) has been exhausted; reduce wildfire suppression costs over time; build on existing Healthy Forests Restoration Act authorities; accelerate needed hazardous fuel reduction work in forest types most susceptible to megafires by providing alternative arrangements for project approvals; require the Forest Service inventory of young growth in the Tongass National Forest before finalizing any forest management plan amendment; and authorize \$500 million over seven years to provide assistance to at-risk communities to invest in proven programs that reduce wildfire risk, property loss, and suppression costs.

With the Senate Committee on Environment and Natural Resources looking to address wildfire funding issues in this Congress, there is a possibility that this legislation could be attached to S. 2012 – the Energy Policy Modernization Act which is currently in conference. NCAI is reviewing this legislation, and will work with the Energy Bill Conferees so that any version of a wildfire bill that passes will include tribes as eligible entities for programs, funding, and management practices to further protect tribal forest lands.

S. 438 - A bill to provide for the repair, replacement, and maintenance of certain Indian irrigation projects (IRRIGATE Act). This bipartisan legislation, introduced by Senator Barrasso (R-WY) on February 10, 2015, will provide the funding necessary to address deferred maintenance and back logged programs for 16 Indian irrigation programs in the west. The legislation creates a fund at the Bureau of Reclamation called the “Indian Irrigation Fund,” which would be funded in the amount of \$35 million annually through Fiscal Year 2036. The Senate Committee on Indian Affairs held a legislative hearing on March 4, 2015, and promptly marked-up the bill two weeks later, reporting it out of the Committee favorably with an amendment in the nature of a substitute. The substitute bill was placed on the Senate calendar on April 27, 2016, and is still awaiting action by the full Senate.

Magnuson-Stevens Fishery Conservation and Management Act Reauthorization. In the last session of Congress, there were multiple hearings and proposals on reauthorization of the Magnuson-Stevens Fisheries Conservation Act (MSA), however Congress was unable to pass legislation. With reauthorization on the table again during this session of Congress, Tribes were hoping to make some much needed changes and amendments to incorporate American Indians and Alaska Natives in the decision making processes, as well as a need for improved practices to protect the health of our fish resources.

Despite being charged with upholding fishing treaty rights of Northwest tribes and the right to fish of Alaska tribes, the management of the North Pacific Fishery Management Council fails to consider the needs of American Indian and Alaska Native people. The structure of the Council prevents tribes from participating as part of the decision making process and engages in a flawed single-species based management system which does not consider the food web dynamics, fishing gear impacts, and non-target species taken as bycatch which has resulted in the overfishing of one-third of the nation’s fish stocks.

Without appropriate reform of the MSA, natural fish populations and the Alaska Native inhabitants’ well-being along with the treaty-protected rights of Pacific Northwest Indian nations will continue to be at risk.

NCAI is requesting that as Congress considers reauthorization of the MSA, either in this Congress or the next, that the purpose of the Act be amended to include promotion of Alaska Native subsistence rights

and tribal fisheries based on treaty rights, including a mandate to be responsive to the needs of federally recognized tribes, and require that tribes and Native subsistence users be represented on the North Pacific Fishery Management Council. Further, it must utilize ecosystem-based management rather than species specific management and additional methods to better protect fish stocks and health. The management council's, as well as all fishery, plans must not only include input from tribes, but must also reflect treaty rights and subsistence rights of American Indians and Alaska Natives while limiting states' ability to interfere with treaty and subsistence rights. Finally, the MSA must provide resources for mitigation efforts when needed to protect tribal treaty rights including: increased hatchery production, habitat protection and restoration, development of alternative fisheries when primary fisheries have been reduced, and the development of value added programs to increase the value of treaty fisheries.

The House Committee on Natural Resources leadership acted swiftly and unilaterally in the middle of May 2015, by taking a smaller piece of legislation, which was focused on one component of the MSFCA reauthorization, and marked-up it into a large scale reauthorization of the entire Act. Now, Congressman Young's *H.R. 1335 - Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act* is a \$1.5 billion, 5 year reauthorization, and includes many changes to MSA, such as: loosening the 10 year time frame for rebuilding overfished/depleted fisheries and the standards used to determine the time frame; changes to the Annual Catch Limits allowing more flexibility in raising the limits; allowing the North Pacific Council to change the harvest limitation under the American Fisheries Act; and requiring the Governor of each applicable state to consult with subsistence fishing representatives before submitting a list of potential Fisheries Councils nominees to the Secretary of Commerce.

During the mark-up, the Committee did not consider any amendments offered by its Democratic members who objected to not being included in the process. However, H.R. 1335 was voted favorably out of the Committee along a strict party line vote. In the Committee Report, the Democrats noted some of their concerns with the legislation, including that it caters to large fishing companies which will harm jobs, and would allow Fisheries Councils to circumvent the National Environmental Policy Act, the Endangered Species Act, the Antiquities Act, and the National Marine Sanctuaries Act by making them subservient to the Councils under the MSA.

On June 1, 2015, H.R. 1335 narrowly passed the House by a 225-152 vote, split primarily along party lines. The Bill has now been sent to the Senate where it will be considered by the Committee on Commerce, Science, and Transportation.

While it looks like MSA reform will not be acted on further in the 114th Congress, NCAI will continue to advocate for the changes in MSA that reflect the treaty and trust rights of Natives who practice traditional and customary lifeways and protect the health of tribal fish and water resources.

Administrative Update

Climate Change. On November 1, 2013, President Obama announced the creation of the White House Task Force on Climate Preparedness and Resilience and appointed two Native representatives to the group: Karen Diver, Chairwoman of the Fond du Lac Band of Lake Superior Chippewa, and Reggie Joule, Mayor of Alaska's Northwest Arctic Borough. The Task Force released its Report and Recommendations to the President in November 2014 with five overarching principles: (1) require consideration of climate-related risks and vulnerabilities as part of all federal policies, practices, investments, and regulatory and other programs; (2) maximize opportunities to take actions that have

dual-benefits of increasing community resilience and reducing greenhouse gas emissions; (3) strengthen coordination and partnerships among federal agencies, and across federal, state, local, and tribal jurisdictions and economic sectors; (4) provide actionable data and information on climate change impacts and related tools and assistance to support decision-making; and (5) consult and cooperate with tribes and indigenous communities on all aspects of Federal climate preparedness and resilience efforts, and encourage States and local communities to do the same.

The final Task Force report was supplemented by tribal-specific recommendations offered by Chairwoman Diver and Mayor Joule from the input they received from tribes during their tenure on the Task Force. The goals highlighted the need for tribes to be included as active participants, but explicitly recommended: (1) tribes have more access to federal agencies' data and information related to climate change; (2) removal of barriers that prohibit tribal access to federal programs; (3) direct access to federal funding; and (4) the establishment of a permanent federal government Climate Adaption Task Force.

In the remaining days of this Administration, NCAI is continuing to advocate that the taskforce's recommendations are implemented and institutionalized for the next Administration, and for Tribal governments to be involved as full partners in all programs, planning, and engagement on climate adaption efforts. NCAI also continues to support climate change initiatives through resolutions dealing specifically with the effects that climate change has on tribes.

Tribal Water Rights Working Group. The NCAI Water Rights Working Group consists of technical experts, such as tribal water resource managers, policy experts, and attorneys with experience in water settlement matters. The group continues to maintain a close working relationship with an ad hoc Indian water rights settlement group, which consists of individuals representing the Native American Rights Fund, the Western Governors Association, and the Western States Water Council.

During the past session of Congress, NCAI joined the ad hoc Indian water rights settlement group for meetings on Capitol Hill to discuss the need for the federal government to ensure funding is available for Indian tribes to quantify their water rights through the Congressional settlement process. Even during the current budget climate, it is important for tribes to tell Congress that the right to water is a fundamental need for Indian tribes, and that as first stewards of this land, tribal rights to water relate back to—at a minimum—the establishment of the reservation, often superseding the water rights of neighboring non-Indian communities. This makes the settlement process even more crucial because water rights left unsettled create uncertainty for all, and often lead to costly and time-consuming litigation.

NCAI continues to reach out and engage its members in discussions on best practices for managing water resources. For instance, NCAI has hosted several webinars and outreach meetings on the importance of quantifying water and the importance of developing sound water management tools within the regulatory jurisdiction of the Indian tribe. NCAI held a webinar on October 21, 2014 on federal perspectives for approving tribal water codes. That webinar can be found on NCAI's website at www.ncai.org.

For additional information please contact Colby Duren, Staff Attorney & Legislative Counsel, cduren@ncai.org.

TRUST MODERNIZATION

In return for Indian tribes ceding millions of acres of land making the United States what it is today, the United States has recognized the Native right to self-government, to exist as distinct peoples on their own lands, as well as the federal responsibility to protect Indian trust assets. However, the trust relationship has not kept up with the current realities facing tribal governments and tribes have been urging the federal government for over a century to modernize outdated regulations and statutes to provide them with more flexibility, the option of greater control over decision making and self-governance, the ability to be more responsive to the needs of their citizens, and bolster economic development in Indian Country. The trust relationship and responsibility must be modernized to stay consistent with self-determination as well as be rooted in inherent sovereign authority to create a 21st Century trust for 21st Century tribes.

While the trust responsibility includes all facets of the relationship, such as funding, health care, housing, and public safety, some of the most glaring examples of outdated statutes involve the management of tribal lands and development of trust resources. Indian lands and natural resources are a primary source of economic activity for tribal communities, but the antiquated and inefficient federal trust resource management system contributes to the anemic condition of many reservation economies. NCAI urges Congress to support legislative reforms that will eliminate the burdensome federal red tape stifling economic development in Indian Country, provide tribes with more flexibility and greater control over decision making, and prevent the reoccurrence of the trust mismanagement problems of the past. There is a need for greater efficiency in the trust resource management system, better economic returns on trust resources, and, above all, an increased tribal voice in how the trust is administered. For example, nearly every trust transaction requires an appraisal from the Office of the Special Trustee, and this is the most significant bottleneck in the trust system. Congress must eliminate unnecessary appraisals and permit tribes to rely on independent certified appraisals.

Tribes have been making progress on trust reform and, to keep that momentum going, NCAI is working with our tribal organization partners on improving trust land management systems and to modernizing the trust to better serve today's Indian Country.

Legislative Update

S. 383 & H.R. 812 – To provide for Indian trust asset management reform, and for other purposes.

Senator Crapo (R-ID) and Representative Simpson (R-ID) both introduced their mirror bi-partisan bills that will take an essential step in the effort to modernize the trust management system into a process that recognizes that tribes are in the best position to make long lasting decisions for their communities. Through the trust asset demonstration project created in the legislation, tribes will have the ability to manage and develop their lands and natural resources without the encumbrances of the federal approval process, which typically delay these endeavors by years or even decades. This provision of the bill also authorizes tribes to engage in surface leasing or forest management activities, under certain conditions, without the approval of the Bureau of Indian Affairs—mirroring the framework of the highly successful HEARTH Act of 2012, which puts tribes in the position to make decisions about their lands and resources.

Further, S.383 and H.R. 812 address one of the most significant bottlenecks in the trust system: the Office of the Special Trustee (OST). OST, which was intended to be a temporary office oversight office when it was created by Congress over twenty years ago, is required to review appraisals for nearly every trust transaction, adding an additional layer of bureaucracy outside the purview of the BIA. This legislation requires the Secretary of the Department of the Interior to submit a report that will include a transition

plan and time table for the termination of OST within two years of the report, or why a transition cannot be completed in that timeframe and an alternate date. Additionally, the Secretary, through tribal consultation, will consolidate the appraisals and valuations processes under a single administrative entity under DOI as well as establish minimum qualifications to prepare appraisals and valuations of Indian trust property.

On April 30, 2015, the House Committee on Natural Resources Subcommittee on Indian, Insular, and Alaska Native Affairs held a hearing on H.R. 812 and received in-person testimony from two tribal witnesses: Ernest Stensgar, Vice Chairman of Affiliated Tribes of Northwest Indians from the Coeur d'Alene Tribe; and William Nicholson II, Secretary of the Colville Business Council for the Confederated Tribes of the Colville Reservation. Both tribal witnesses spoke in favor of H.R. 812, and cited how it would help economic development and update antiquated trust asset management laws. Subcommittee Chairman Don Young (R-AK), spoke in support of the legislation and affirmed the Committee's support for taking quick action on the bill.

In the Senate, the Senate Committee on Indian Affairs marked-up S. 383, passing it favorably out of Committee with an amendment in the nature of a substitute and filed a written report on February 8, 2016.

On February 3, 2016, the full House Committee on Natural Resources favorably reported H.R. 812 out of committee with an amendment in the nature of a substitute by unanimous consent. The House of Representative passed H.R. 812 by a unanimous voice vote and sent the legislation to the Senate for consideration on February 24, 2016.

NCAI submitted a letters to the Senate Committee and House Subcommittee voicing support for passage of S. 383 & H.R. 812 and will continue to work with our partner organizations on implementing this important legislation.

The Senate took up H.R. 812 on June 10, 2016 and passed it by unanimous consent. H.R. 812 was signed into law by the President on June 22, 2016.

In August, the Department of the Interior began tribal consultation on the Indian Trust Asset Reform Act and is accepting written comments through October 7, 2016.

Administrative Update

Cobell Settlement Payments. The *Cobell v. Salazar* settlement was approved by Congress in the Claims Resolution Act of 2010 and became final in November 2012. The settlement included \$1.5 billion to pay individual Indian trust beneficiaries for past accounting issues and resolve historical asset mismanagement claims and \$1.9 billion to be made available to the Secretary of the Interior to buy interests in trust lands that are “fractionated,” pursuant to the Land Buy-Back program of the Indian Land Consolidation Act.

The payment of the \$1.5 billion--minus attorneys' fees and expenses incurred in carrying out the settlement--to individuals is being carried out in two stages: first to the Historic Accounting Class (HAC) and then to the Trust Administration Class (TAC). Beginning in December of 2012, checks for the HAC in the amount of \$1,000 were distributed by the Garden City Group, the Claims Administrator for the *Cobell* Settlement, to claimants across the country. Eligible claimants were persons who were determined, according to the records of the Department of Interior, to either be alive

or have an estate in probate on September 30, 2009, and to have had an open and active Individual Indian Money (IIM) account during any period between October 25, 1994, and September 30, 2009.

As of the end of September 2013, payments had been made to more than 90 percent of those eligible, totaling more than \$236,940,000.00, with 33,400 remaining estate cases and an estimated 11,000 remaining on the Whereabouts Unknown list for the HAC. Special efforts are being conducted to continue to settle the estates and locate individuals whose whereabouts are unknown.

Eligibility for the Trust Administration Class (TAC) was finalized as determination letters were sent on May 1, 2013, to more than 375,000 individuals. On September 11, 2014, the U.S. District Court for the District of Columbia approved the distribution of payments to the TAC. The checks were mailed out to the TAC on September 15, 2014. As of October 24, 2014 a Special Master has reviewed and made determinations in all claimant appeals and the deadline for submission of all documents and requests to the Special Master was on March 9, 2015. For more information and updates on the progress of the settlement, go to www.indiantrust.com.

Land Buy-Back Program. The *Cobell* Settlement provides for a \$1.9 billion Trust Land Consolidation Fund and charges the Department of the Interior with the responsibility to expend the Fund within a 10-year period to acquire fractional interests in trust or restricted fee land that individuals are willing to sell. Those interests will be transferred in trust to the tribal government with jurisdiction over the land. The Land Buy-Back Program has been established by the Department of Interior to implement this aspect of the Settlement. The overall goal of the Land Buy-Back Program is to reduce the number of those fractional interests through voluntary land purchases, which will produce more consolidated tribal trust land bases.

The Department has prepared an Initial Implementation Plan (updated in November 2013) for the Land Buy-Back Program based on preliminary planning and tribal consultation. The Department has stated that it intends to continually update its plans to reflect tribal feedback, lessons learned, and best practices. Tribal consultation sessions on the Plan and Land Buy-Back Program were held in early 2013 in Minneapolis, Rapid City, and Seattle. Key issues at the consultations included the urgency to get the program started, cooperative agreements with tribal governments for participation in the program, the status of permanent improvements, concerns about the ability to conduct appraisals in a timely way, and land title processing. NCAI has hosted three webinars on the program in the past two years.

The plan's initial focus was on 40 highly fractionated reservations and active outreach to tribes from those areas to enter into the Buy-Back Program's cooperative agreement application process. This open solicitation period began on November 15, 2013 and ended on March 14, 2014. While a small number of tribes have entered into cooperative agreements to carry out certain functions of the program, several tribes have expressed concerns with the limited roles that tribes are being offered under the program, the slow rate of program implementation, and the fact that the \$1.9 billion fund is not earning interest--a potential loss of millions of dollars that would otherwise be available to purchase fractionated interests. So far, the Buy-Back Program has purchased land for these tribes: Oglala Sioux Tribe, Rosebud Sioux Tribe, Makah Tribe, Fort Belknap Indian Community, Gila River Indian Community, Northern Cheyenne Tribe, Confederated Salish and Kootenai Tribes of the Flathead Nation, Confederated Tribes of the Umatilla Indian Reservation, Quapaw Tribe, Crow Nation, Sisseton Wahpeton Oyate, Squaxin Island Tribe, Coeur d'Alene Tribe, Cheyenne River Sioux Tribe, Standing Rock Sioux Tribe, Prairie Band Potawatomi Nation, Fort Peck Indian Reservation, Swinomish Indian Tribal Community, Lummi Nation,

Cabazon Indian Reservation, Agua Caliente Indian Reservation, and Round Valley Reservation. Eight more tribes are currently in process: Fond du Lac Reservation, Navajo Reservation, Fort Hall Reservation (of the Shoshone-Band Tribes), Quinault Indian Reservation, Ponca Tribe of Indian of Oklahoma, Osage Nation Reservation, and Lower Brule Reservation.

NCAI is looking to work with the next Administration and next Congress to ensure the *Cobell* settlement and land buy-back program are being implemented in accordance with the approved settlement and in a way that can be accomplished within the timeframes set out in the settlement, or to see if the timeframe can be extended to ensure that all of the funds can be used to consolidate tribal homelands.

HEARTH Act Implementation. The Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act became law on July 31, 2012. The Act authorizes surface leasing of tribal lands without approval from the Secretary of the Interior. Instead, tribal leases can be approved by the tribe under tribal leasing regulations. The new law will enable tribes to move more quickly on leasing and economic development, while maintaining the Secretary's trust responsibility to oversee trust lands.

Tribal leasing codes must be consistent with the BIA's recently updated leasing regulations, 25 C.F.R. 162. The BIA also published a [National Policy Memorandum](#) containing a list of criteria that should be considered with further information on BIA's HEARTH Act [website](#). Key requirements include leasing code development and an environmental review process. As of October 2, 2016, the BIA has approved the leasing codes of 25 tribes with more codes under review.

For additional information please contact Colby Duren, Staff Attorney & Legislative Counsel, cduren@ncai.org

ENERGY

Tribal energy resources are vast, largely untapped, and critical to America's efforts to achieve energy security and independence, reduce greenhouse gases, and promote economic development. Energy development is integral to tribal efforts to generate jobs and to improve tribal members' standard of living. The Department of the Interior estimates that undeveloped traditional energy reserves on Indian lands could generate up to \$1 trillion for tribes and surrounding communities. Further, the Department of Energy estimates that tribal wind resources could provide 32 percent, and solar energy 2 times, the total amount of electricity the United States currently generates per year. However, developing energy resources on tribal lands, not unlike other trust resources, continues to be a challenge as tribes face barriers to energy development which do not exist outside of tribal lands.

Cumbersome bureaucratic processes, disincentives to tribal financing, Applications for Permit to Drill fees, inequitable exclusion from federal programs, and the requirement that tribes and tribal businesses obtain approval from the Department of the Interior for almost every step of energy development on tribal lands, including the approval of business agreements, leases, rights of way, and appraisals, continue to delay energy development in Indian Country. Since the last major update to Indian energy policy was 10 years ago, NCAI urges Congress and the Administration to work with tribes to remove the unnecessary barriers that persist in energy development, bolster tribal self-determination, and help create careers and capital in Indian Country.

Legislative Update

S. 209 – Indian Tribal Energy Development and Self-Determination Act of 2015. On January 21, 2015, Senator Barrasso (R-WY) reintroduced his longstanding legislation to provide tribes with greater control and flexibility to develop their traditional and renewable energy resources and streamline many

of the burdensome processes tribes persistently face. The current bill is identical to the version passed out of the Senate Committee on Indian Affairs in the 113th Congress, with one notable exception explained below. The bill includes additional consultation requirements for the Department of the Interior; improves the Tribal Energy Resource Agreements process in the Energy Policy Act of 2005 by recognizing tribal self-determination over energy resources; creates a process for approving Tribal Energy Development Organizations; expands direct access to the Department of Energy's Weatherization Program; supports American Indian and Alaska Native biomass demonstration projects; and amends the appraisal and right-of-way approval processes.

This Congress, the Committee marked-up and favorably passed this legislation out of Committee on February 4, 2015. In January of this year, all of the provisions of S. 209 were adopted in S. 2012 – the Energy Policy Modernization Act, a bi-partisan, large-scale Senate energy legislation introduced by Senator Lisa Murkowski (R-AK).

H.R. 538 – The Native American Energy Act of 2015. In the House of Representatives, Congressman Young (R-AK) introduced H.R. 538, the Native American Energy Act of 2015. This legislation maintains the major focus of removing regulatory hurdles to tribal energy development. This legislation will: reform and streamline the federal appraisal process and including the option for tribes to waive the appraisal requirement; create uniform systems of reference and tracking numbers for all Department of the Interior oil and gas wells on Indian lands; restructure the environmental review process; support tribal biomass demonstration projects; and consider all tribal resource management plans as sustainable management practices.

On October 8, 2015, H.R. 538 passed the House of Representatives on a vote of 254-173, with two amendments: (1) not limiting comments under the National Environmental Policy Act to for lands pursuant to the Indian Gaming Regulatory Act; and (2) an amendment creating a Tribal Forest Management Demonstration Project under the Tribal Forest Protection Act at the U.S. Forest Service.

On April 20, 2016, the Senate passed S. 2012 by a vote of 85-12 as the first major, bipartisan energy reform legislation in over 10 years. Upon being sent to the House of Representatives, the House Committee on Rules added 37 additional bills which have already passed the House to S. 2012, including H.R. 538. However, several of the bills added to the House version of S. 2012, including the House's own energy bill H.R. 8 – the North American Energy Security and Infrastructure Act, have veto threats issued against them by the White House. The House passed S. 2012 by a partisan vote of 241-178 and filed a motion to go to conference with the Senate on the two versions of the bill.

On July 12, 2016, the Senate voted to go to conference with the House on two versions of S. 2012 that were passed by each chamber. While members' staffs have been working on the bill throughout July and August, the conference officially started on September 8, 2016 and all of House and Senate Conferees are looking to work through the bill. All of the Senate version of S. 2012, including S. 209 should be included in any final version of the bill as they were passed by both chambers, however the conferees have a difficult task of working through the partisan sections.

There is also the possibility that forestry and wildlife legislation could be added to the bill as the conference has the potential to be an open process. NCAI sent a letter to the conferees expressing the importance of Indian energy reform and will continue to work with the conferees through the end of the process. If the conferees come to an agreement on the bill, we expect that would not happen until after the election.

For additional information please contact Colby Duren, Staff Attorney & Legislative Counsel, cduren@ncai.org

AGRICULTURE & NUTRITION

Agriculture is a major economic, employment, and nutrition sector in Indian Country. In 2012, there were at least 56,092 American Indian-operated farms and ranches on more than 57 million acres of land. These farms and ranches sold \$3.3 billion of agricultural products, including more than \$1.4 billion of crops and \$1.8 billion of livestock and poultry. Additionally, the 2007 Census of Agriculture Fact Sheet notes that, “American Indian farm operators are more likely than their counterparts nationwide to report farming as their primary occupation . . . to derive a larger portion of their overall income from farming . . . [and] to own all of the land that they operate.” As a result of the huge agricultural footprint across Indian Country and the fact that more than 35 percent of American Indian and Alaska Native peoples live in rural communities, tribal governments and farmers look to active partnerships throughout the U.S. Department of Agriculture to sustain and advance common interests across the broad array of services that this federal agency provides to tribal governments.

With 24 percent of American Indian and Alaska Native households receiving Supplemental Nutrition Assistance Program (SNAP) benefits, 276 tribes administering the Food Distribution Program on Indian Reservations (FDPIR), 68 percent of American Indian and Alaska Native children qualifying for free and reduced price lunches, and American Indians and Alaska Natives making up more than 12 percent of the participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) the importance of food assistance in Indian Country cannot be overstated. Any cuts to SNAP, FDPIR, WIC, or school lunch programs directly diminish the food, and in some cases the only meals, available to Native children, pregnant women, elders, and veterans. No one, especially our tribal citizens most in need, should ever have to go without food. Additionally, food assistance programs like FDPIR must be provided the means and support to purchase traditional, locally-grown food in their food packages. Traditional and locally-grow foods from Native American farmers, ranchers, and producers encourages healthy living, cultural sustainability, and a return to traditional practices all while supporting economic development. Below is a look at the agriculture and nutrition policies that will be a focal point in the final two years of the Obama Administration and the 114th Congress.

Legislative Update

Reauthorization of the Healthy Hunger-Free Kids Act of 2010 (Child Nutrition Reauthorization). The Healthy Hunger-Free Kids Act of 2010 is a 5-year bill that governs several food programs that impact Native children and parents: the National School Lunch and School Breakfast Programs; the Child and Adult Care Food Program; the Summer Food Service Program; the Afterschool Snack and Meal Program; the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC); the WIC Farmers Market Nutrition Program; the Fresh Fruit and Vegetable Program; and the Special Milk Program. As was seen in the 2014 Farm Bill debate, nutrition standards, costs, and program eligibility will continue to be at the forefront of the Child Nutrition Reauthorization. With the law expiring on September 30, 2015, the Senate Committee on Agriculture and House Committee on Education and the Workforce, the two Committees with jurisdiction, have already begun to hold oversight hearings on

Child Nutrition, and will shortly determine potential changes to the law. NCAI is working with many major nutrition policy groups and our tribal organization partners to make sure Indian Country's priorities are included in the Reauthorization.

Administrative Update

2014 Farm Bill Implementation. On February 7, 2014, President Obama signed *H.R. 2642 - the Federal Agriculture Reform and Risk Management Act of 2013* into law ending over two years of work on the Farm Bill reauthorization. The final piece of legislation represented a bipartisan agreement on a majority of agriculture and nutrition policies and made a number of changes to existing programs while creating many new opportunities for Indian Country. The most noteworthy change is an \$8.6 billion cut to the Supplemental Nutrition Assistance Program (SNAP). This represents a compromise between the \$4 billion in cuts the Senate bill proposed and the nearly \$40 billion from the House bill. The savings comes from increasing the threshold amount of Low-Income Housing Energy Assistance Program (LIHEAP) assistance necessary to qualify for increased SNAP benefits- the so called "Heat and Eat" provision-from \$1 to \$20.

The new law includes several Indian Country specific provisions, including: tribal eligibility in Soil and Water Conservation Act programs; a feasibility study on tribal administration of federal food assistance programs; a Food Distribution Program on Indian Reservations (FDPIR) Traditional Foods Demonstration Project—which creates a new demonstration project with technical assistance and tribal consultation to allow the inclusion of traditional and locally grown foods from Native farmers, ranchers, and producers in FDPIR; the service of donated traditional foods in federal food service programs such as residential child care facilities, child nutrition programs, hospitals, clinics, long-term care facilities, and senior meal programs.

The focus of the Farm Bill is now on implementation of the new programs at USDA. NCAI is working with the Office of Tribal Relations on many of the new programs to ensure that Indian Country is well represented during the rulemaking phase and that tribal consultation, where applicable, is performed so the regulations follow Congress's intent and benefit tribes and Native farmers, ranchers, and producers.

NCAI submitted comments in December 2014 regarding the feasibility study for tribes to administer their own federal food assistance programs to ensure that study is conducted in a fair manner and follows the intent of the law: to determine whether legislative action or administrative action is necessary to allow tribes to take over federal food programs, particularly SNAP. So far, the outreach and questions proposed by the USDA's Food and Nutrition Service are troubling at best. They seek to review whether tribes have the current capacity to administer these programs. Instead, NCAI is advocating for the study to look at the federal framework necessary for tribes to take over the program administration with the proper funding and support from the federal government since tribes are in the best position to determine how these programs can best serve their citizens.

Keepseagle Settlement. The *Keepseagle* litigation with the U.S. Department of Agriculture for discrimination in the USDA Farm Loan Program was settled on December 27, 2011, for \$760 million. Payments were made in August and September 2012 to 3,600 individuals with claimants receiving from \$50,000 to \$250,000 depending on their type of claim. The settlement also includes payment of the taxes on settlement proceeds and payment/reduction of outstanding debt.

The final action is the disposition of the remaining \$380 million from the original \$760 million settlement after all payments to successful claimants. To assure that the remaining funds would continue to benefit American Indian agriculture into the future, Class Counsel—after their request for another round of payments to successful claimants was not accepted—submitted proposals to the U.S. Departments of Agriculture and the Department of Justice to establish an independent foundation with the \$380 million that would serve Native American farmers and ranchers. In September 2013, a group of over 300 *Keepseagle* claimants from the Great Plains region filed a motion to intervene in the negotiations but have not been involved so far. In July 2014, the *Keepseagle* Class Counsel announced a series of meetings between July 30th and August 26th to discuss the disposition of the remaining \$380 million dollars.

At the conclusion of the in-person meetings, Class Counsel filed its proposal with the court outlining in detail the creation of a *cy pres* fund called the Native American Agriculture Fund (Fund) for the remaining \$380 million, governed by a proposed Board of Directors, and guidelines for what entities are eligible to receive funding from the new Fund. The Fund would be a 501(c)3 non-profit entity and would be able to distribute funds to: 501(c)3 non-profits; 170(b)(1)(A)(ii) educational organization; Community Development Financial Institutions (CDFI), including Certified Native CDFIs and Emerging Native CDFIs if they are 501(c)3 entities; and the instrumentality of a state or federally recognized tribe, including a non-profit organization chartered under the tribal law of a state or federally recognized tribe, that furnishes assistance designed to further Native American farming or ranching activities.

On December 2, 2014, the court held a status conference and Ms. Keepseagle was allowed to voice her concerns about the creation of a trust. The Judge saw this as a brief for relief and informed Ms. Keepseagle that she could retain counsel and submit a motion making the legal argument to reopen the settlement for an additional round of payments.

In May 2015, the Court requested briefs regarding the claims of Ms. Keepseagle's motion for relief asking for the remaining funds to be dispersed among the claimants. On July 24, 2015, the Court denied both motions to modify the settlement agree proposed. The first motion filed by Ms. Keepseagle would have allowed for the distribution of additional funds to prevailing claimants or re-open the claims process. USDA objected to this motion and the Court decided there was no legal basis for going against the Agency's objection. The Court then denied the Plaintiff's motion to create a Trust to supervise the distribution of the *cy pres* funds to non-profits, ruling that all class representatives, including Ms. Keepseagle, would have to agree on any changes to the settlement agreement.

All parties with standing in the case reached an agreement on changes to the existing settlement agreement. Under the new proposal, each prevailing claimant will receive a supplemental payment of \$18,500 (a separate sum of \$2,775 will be paid to the IRS on their behalf). The remainder of the *cy pres* funds would go to non-profit organizations as described above. The Court held a hearing on this new agreement to modify the settlement on February 4, 2016. The Court approved the new agreement on April 20, 2016 and no appeals were filed.

On May 17, 2016, the class counsel in *Keepseagle* case announced a one-time distribution of \$38 million from the remaining settlement funds through the Native American Agricultural Fast Track Fund (NAAFTF). This will be the first distribution of \$380 million left in the *Keepseagle cy pres* fund for the benefit of Native American farming and ranching.

The fast-track registration opened on May 25, 2016, and closed on June 24, 2016. The awards from NAAFTF are to be made on a competitive basis. To qualify for the awards, interested organizations: must provide documentation of agricultural, business, technical or advocacy services to Native American farmers or ranchers between January 1, 1981, and November 1, 2010; be based in the United States, and meet one of the following criteria: 501(c)(3) tax-exempt organization; 7871 designation as a non-profit organization chartered under the tribal law of a state or federally recognized tribe; an educational institution described in 170(b)(1)(A)(ii); or an instrumentality of a state or federally recognized tribe, designated under 7701(a)(40).

For more information on the NAAFTF process, go to:
<http://www.indianfarmclass.com/NAAFTF.aspx>.

For more information and updates on the progress of the settlement, go to:
www.indianfarmclass.com/CyFunds.aspx.

For additional information please contact Colby Duren, Staff Attorney & Legislative Counsel, cduren@ncai.org.

ECONOMIC/COMMUNITY DEVELOPMENT

TRIBAL TAX INITIATIVES

The last national tax reform occurred thirty years ago with the passage of the Tax Reform Act of 1986. Under the current Tax Code, tribal governments are left without many of the benefits, incentives, and protections provided by the Code to state and local governments. This inequity significantly handicaps tribal sovereign authority to provide government revenue for tribal programs independent of federal appropriations and encourage economic growth on tribal lands.

Tribal governments retain inherent authority to regulate and tax commerce on tribal land, but tribal authority is crowded by dual state taxation. Tribal governments face a losing proposition when forced to collect state taxes: either impose a dual tax or drive business away, or collect no taxes and suffer inadequate roads, schools, police, courts and health care. To add insult to injury, reservation economies are funneling millions of dollars into state treasuries who spend the funds outside of Indian Country. This dilemma undermines the Constitution's promise of respect for tribal sovereignty, and keeps Indian reservations the most underserved communities in the nation.

Reliable funding sources have been few and far between for every tribal government service for decades. Both Congress and the Administration must continue to actively engage with Native nations to achieve tribal tax reform in a comprehensive manner.

Administrative Update

Action to Appoint Remaining Vacancies to the Department of Treasury's Tribal Advisory Committee. Established under the Tribal General Welfare Exclusion Act of 2014, The U.S. Department of Treasury's Tribal Advisory Committee will advise the Secretary on matters related to the taxation of Indians, the training of Internal Revenue Service field agents, and the provision of training and technical assistance to Native American financial officers. In late 2015, the Secretary of Treasury appointed three members of the committee of seven. Those three appointments members include: W. Ron Allen, Chairman and Chief Executive Officer of the Jamestown S'Klallam Tribe; Lacey Horn, Treasurer of the Cherokee Nation, and Marilynn "Lynn" Malerba, Lifetime Chief of the Mohegan Tribe. Most recently, on September 30, 2016, Ranking Member of the Senate Committee on Finance, Senator Ron Wyden appointed Shannon Edenfield, a Tribal Council member for the Confederated Tribes of the Siletz Indians of Oregon who serves as its Tribal Administrative Officer. Two vacancies remain.

NCAI will continue to urge the Administration to fill the remaining two vacancies and urge implementation of the Advisory Committee.

Address the Harms of Dual Taxation in Indian Country through Modernizing the Indian Trader Regulations. The Indian Trader Regulations at 25 C.F.R §140 are an anachronism in the era of Tribal Self-Determination. They have not been updated since 1957. It is no longer necessary for the Department of Interior to license traders on Indian reservations, and the regulations are an unnecessary burden on economic development. The underlying law at 25 USC §262 is broad and flexible authority for the Department of Interior to adopt new regulations that would meet the economic development and tax revenue needs of Indian tribal governments in the 21st Century. We urge the Department of Interior to replace the current regulations, see NCAI Resolution SD-15-045: *Urging the Department of Interior to Address the Harms of State Taxation in Indian Country and Prevent Dual Taxation of Indian Communities*.

In order to ensure long-term stability of tribal communities, there is an urgent need for development of tribal authority to provide government revenue independent of federal appropriations. Tribal governments are taking on increasing levels of government responsibility, but receive hugely inadequate federal funding for roads, schools, police and all government services promised by treaty and the federal trust responsibly. All remaining revenue must come from tribal natural resources or enterprises, and even these limited resources are frequently tapped by unconscionable dual state taxation. The Department of Interior is also severely affected by the lack of funding for tribal programs. NCAI urges swift action.

Legislative Update

The Indian Community Economic Enhancement Act of 2016 (ICEE Act), S. 3234. The Indian Community Economic Enhancement Act of 2016 was introduced by Senators John Barrasso and John McCain on July 14, 2016. S. 3234 seeks to increase access to capital, increase opportunities for Indian business promotion and create mechanisms and tools to attract businesses to Indian communities. Included within its provisions, S. 3234 seeks to eliminate the “essential government function” classification for the issuance of Tribal tax-exempt bonds and apply the same Federal tax standards and requirements as states. Additionally, this bill also seeks to amend the Indian Trader Act by providing more flexibility for tribal entities that have enacted their own laws governing licensing, trade, or commerce. S. 3234 was sent to the Senate Committee on Indian Affairs where it was marked up with an amendment in the nature of a substitute in September of 2016.

Tribal Tax and Investment Reform Act. H.R. 4943, the Tribal Tax and Investment Reform Act, is co-sponsored by Ron Kind (D-WI) and Lynn Jenkins (R-KS). The bill amends the federal Tax Code to ensure that Indian tribal governments are treated the same as state governments for a number of important purposes. Encouraging parity of tax treatment should be a fundamental goal of tax reform, and is an opportunity to support governmental functions and services provided by Indian tribes.

Tribal governments have a unique status in our federal system under the Constitution and numerous treaties and federal laws. Indian tribes have a governmental structure, operate and fund courts of law, police forces, and fire departments. Tribes provide a broad range of governmental services to their citizens, including education, transportation, public utilities, health, economic assistance, and domestic and social programs.

While the federal government recognizes that tribal nations are governments, tribes are frequently treated less favorably than state and local governments under the Tax Code. Such differential and unjust treatment typically results in tribal governments being denied federal tax benefits and economic development incentives that state and local governments enjoy. H.R. 4943 will build on the Indian Tribal Governmental Tax Status Act of 1982 to provide comparable governmental tax treatment.

- *Tribal government tax-exempt bonds.* Currently, tribes may only use tax-exempt bonds for “essential government functions. The IRS has interpreted this tribal-only to exclude economic development as a governmental function, while state and local governments frequently use tax exempt financing for development projects. Tribes need this tool to create jobs. (In 2009, Congress authorized a limited volume of tribal economic development bonds, but the allocation process is convoluted and a permanent fix to the Tax Code is needed.)

- *Tribal government pension plans.* Tribal governments currently must provide both government and private ERISA pension plans to their employees. This is both costly and cumbersome. Tribal governments must be able to operate a single, comprehensive, government pension program for all of their employees.
- *Tribal foundations and charities.* Foundations and charities funded and controlled by tribal governments do not enjoy the same public charity status that other government-controlled and funded foundations and charities enjoy. In order for tribal foundations and charities to thrive, these tax-exempt organizations should not be treated as private foundations, but should enjoy the same status as state-government controlled foundations and charities.
- *Tribal child support enforcement agencies.* Tribal child support enforcement agencies need authority to access parent locator services, which are currently only available to state and local governments but not tribes. Also, tribal child support enforcement agencies should be able to enforce past due obligations through federal income tax returns.
- *Indian Adoption Tax Credit.* Adoption is widespread throughout Indian Country. Tribal courts need the ability to make a determination of special needs in order to grant tax credits to adoptive parents on par with state courts.

H.R. 4943 was referred to both the Ways & Means and Education and the Workforce Committees. NCAI will continue to work with members of Congress in support of tax parity for tribal governments.

Include American Indian/ Alaska Native tribal governments in any forthcoming tax reform bill. Any comprehensive tax reform will likely create a Tax Code which will govern the United States, its territories, and Indian tribal governments for decades to come. NCAI will continue to work with Congress to ensure further consultation with tribes to develop an initiative that will promote tribal government tax authority and promote the ability of tribal governments to sustain programs and services in a more self-sufficient manner.

Make Tax “Extender” Incentives Permanent -- Support legislation to incentivize business development on tribal lands. NCAI will continue to urge Congress to consider the urgent and continuing need for economic development on Indian reservations in the context of the Indian Employment Tax Credit (IRC Section 45A), the Accelerated Depreciation Provision for on-reservation business infrastructure (IRC Section 168(j)), and the Indian Coal Production Tax Credit (IRS Section 45) which expired on December 31, 2016, and should be reenacted as soon as possible and on a permanent basis.

The Employment Credit provides private businesses with an incentive for employing Indian tribal members in reservation-based business operations. The Accelerated Depreciation Provision provides businesses with the opportunity to take accelerated depreciation deductions on business property located on Indian reservations. NCAI will continue to recommend that Congress make both tax incentives permanent so that employers can rely on the incentives when planning to locate a facility in Indian Country. The lack of certainty in the future of these tax provisions undermines their ability to attract larger, long-term investments.

Tax credits granted to doctors employed by Indian Health Service facilities. H.R. 5406, the Helping Ensure Accountability, Leadership and Transparency in Tribal Healthcare (HEALTTH) Act, is sponsored by Rep. Kristi Noem (R-SD). On September 21, 2016, The House Ways & Means Committee approved this piece of legislation which seeks to amend the Indian Health Care Improvement Act to improve access to tribal health care by providing for systemic Indian Health Service workforce and funding allocation reforms, and for other purposes, like the tax treatment of the Indian Health Services student loan repayment program. Tax credits such as these are available to doctors employed in other areas of the public sector, but are currently unavailable to those employed by the Indian Health Service. This would create an incentive for practitioners to bring their skills to Indian Country, where they are greatly needed.

Enact a Technical Amendment to Remove the “Kiddie Tax” Penalty from Transfers of Tribal Funds to Children and College Students. The Kiddie tax was intended to prevent wealthy parents from transferring income to their children in lower tax brackets. It is unfairly applied to Native youth who receive tribal funds, and creates a significant disincentive for continuing higher education.

Include Tribal Governments in the Marketplace Fairness Act. NCAI will continue to advocate for the inclusion of tribal governments in any legislation that regulates the collection of sales taxes or implements the State Streamlined Sales and Use Tax Agreement. The Senate has included tribes within this year’s version of S. 698, and NCAI will continue to advocate for inclusion in the House version, H.R. 2775.

Establish Tribal Empowerment Zones. To allow all Indian nations to become more economically empowered, NCAI proposes significant changes in the economic foundation of Indian country. Tribes must be allowed to capture wealth that is generated on tribal lands without confiscation by the federal and state governments. While the federal government should never be relieved of its trust responsibility to support tribal governments, more should be done to allow tribes to develop their own economies._

Tribal Access to Clean Renewable Energy Bonds (CREBs). Tribes and entities wholly owned or controlled by tribes, to utilize CREBs for energy development projects. Legislation should create a set aside for tribal projects under the CREBs provision.

For additional information please contact John Dossett, General Counsel, john_dossett@ncai.org.

NATIVE AMERICAN WORKFORCE DEVELOPMENT

A considerable body of research built over the past three decades concludes definitively that tribal self-determination/self-governance is the *only* policy that has ever succeeded in improving the lives of Native people and the quality of life in tribal communities. Nowhere does this finding ring truer than with tribal workforce development. Tribal nations – along with Native organizations and TCUs – are crafting innovative, customized solutions to their particular workforce development challenges, solutions that (1) make real differences in the lives of Native people in search of employment and the education, skills, and experience necessary to build successful careers, and (2) strengthen tribal sovereignty in the process.

In October 2016, NCAI released the brief “Empowering Tribal Workforce Development: Indian Country's Policy Recommendations for the Federal Government” (to view brief, please visit <http://www.ncai.org/ptg/work-force-development>). The brief presents a list of key policy recommendations for Congress and the Administration as it supports tribal nations, Native

organizations, and tribal colleges and universities (TCUs) as they design, refine, and strengthen their workforce development efforts. It is not an exhaustive list; rather, it features Indian Country's primary recommendations for actions that the federal government can take to empower tribal workforce development.

Administrative Update

Implementation of the Workforce Innovation and Opportunity Act (WIOA) and Its Full Implementation. In July 2014, President Obama signed this act into law, which reauthorized the 1998 Workforce Investment Act after an 11-year delay. In the process of implementing WIOA, its Section 166 Native grantees are encountering several emerging issues that are inhibiting their ability to take full advantage of the expanded latitude for tribal innovation that the legislation intended to provide. As set forth in NCAI's brief, these grantees have identified the need for three technical amendments to WIOA that would address these issues, namely: (1) insuring that the performance indicators and standards applicable to Section 166 programs are standards specifically appropriate to that program; (2) removing the application of the performance accountability provisions in WIOA Section 116 from all funds provided to implement the Native programs in Section 166 and use the metrics and standards developed specifically for these programs in consultation with the Native American Employment and Training Council in accordance with Section 166(h), and (3) expanding Subsection 166(i)(6) to enable tribal nations or other grantees receiving formula funds from any state under the adult, youth and/or dislocated worker programs to negotiate an agreement with the state and the Secretary of Labor.

Federal Underfunding of Native American Workforce Development Programs. Federal funding for Native workforce development programs is a fraction of what it was in the past. Meanwhile, the Native population is one of the fastest growing in the country, increasing by 27 percent between 2000 and 2010. It also is one of the country's youngest populations, with 32 percent of the Native population under the age of 18 (compared to 24 percent of the U.S. population as a whole). *At a minimum*, full federal funding for vital Native American workforce development and related grant programs (WIOA, BIA's Job Placement and Training, ED's Adult and Vocational Education, Tribal TANF, and Tribal Vocational Rehabilitation programs, to name a few) needs to be restored to the levels they were in 2000, adjusted upwards for the significantly expanded size of the service population and increases in the cost of services such as tuition for post-secondary educational institutions.

Barriers Impeding the Progress of the 477 Program. The evidence clearly shows that Public Law 102-477 (the Indian Employment, Training and Related Services Demonstration Act of 1992) is working but the federal agencies responsible for administering 477 can do more to enable tribal nations to make 477 work *better*, notably by increasing collaboration among the agencies and streamlining and simplifying 477's funding and reporting requirements. This was a key part of the program's original intent, but federal agencies have strayed from this commitment and instead of streamlining the program, have created additional barriers to its success. This dynamic also discourages some smaller and/or remote tribes from benefitting from the 477 program, as the administrative costs are too high to make it cost effective. Fully implementing the explicit requirements in the current law that tribal nations provide only a single plan, single budget, and single report is vital to tribal nations' ability to strategically craft innovative solutions and maximize the resources available to actually serve their citizens.

The American Indian Population and Labor Force Report is Long Overdue. The report, which the Department of the Interior is required by statute to produce every two years, was last produced for the year 2013, making the next report long overdue. This report can be an important tool for assessing the current

state of the Native workforce and crafting solutions to expand/strengthen it. For the next report to provide substantive value to tribal nations, Native organizations, and TCUs, its development must involve tribal leaders and data experts, and it should be informed by workforce and occupational data generated by tribal researchers, to which the federal government should provide technical expertise and financial resources in order to perform the work. This data should be geared towards measuring the distinct job market needs in Indian Country and illustrating the particular socio-economic conditions that impact Native people specifically.

Legislative Update

S. 1443 & H.R. 329 – Indian Employment, Training and Related Services Consolidation Act of 2015. These companion bills amend the Indian Employment, Training and Related Services Demonstration Act of 1992 in order to provide for integration of employment, training, and related services programs using federal funds. Among other things, the legislation revises and expands the types of programs that may be included within an approved tribal 477 integration plan, enables tribes to use available funds to place participants in training positions with employers, and imposes on the Bureau of Indian Affairs a 45-day deadline to disburse funds to recipient tribes. It also treats any funds transferred to a tribe under the legislation as non-federal funds for the purposes of meeting matching requirements under any other federal law. S. 1443 passed the Senate without amendment on July 14, 2016, and was then sent to the House for consideration.

H.R. 3026 – Tribal TANF Fairness Act of 2015. This bill, introduced in the House on July 10, 2015, makes a single amendment to part A (Temporary Assistance for Needy Families) (TANF) of Title IV of the Social Security Act to allow a tribal government (including one participating in an intertribal consortium) to lease land held in trust or in fee, at a fair market rate, for the administration of a tribal family assistance grant by the tribal government or the intertribal consortium. The bill was referred to the House Subcommittee on Human Resources upon its introduction and no action has been taken on it since.

For additional information, please contact Ian Record, Partnership for Tribal Governance Director, irecord@ncai.org.

TRIBAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Temporary Assistance for Needy Families (TANF) is a federal block grant program designed to help needy families achieve self-sufficiency. TANF was created as part of welfare reform in 1996 under the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). Families with children receive cash assistance for their compliance with guidelines including work participation, job training, and education. Four primary purposes of the TANF program are to: 1) provide assistance to needy families so that children of those families may be cared for inside the home; 2) to reduce dependency by promoting job preparation, work, and marriage; 3) to prevent and reduce the incidence of out-of-wedlock pregnancies; and 4) to encourage the formation and maintenance of two-parent families.

Under section 412 of the Social Security Act, federally-recognized Native American tribes can apply for funding to administer and operate their own TANF programs—in which case the tribe will be required to submit a three-year Tribal TANF plan to the Secretary of the Department of Health and Human Services (HHS) through the Administration for Children and Families (ACF) for review and approval. If approved, Tribal TANF programs will receive a portion of the state TANF block grant from the state where the tribe is located.

As of January 1, 2015, there are 70 approved tribal TANF programs that serve 284 federally recognized tribes and Alaska Native Villages. TANF gives federally-recognized Indian tribes flexibility in the design of welfare programs that promote tribally relevant programs to assist in strengthening families.

In partnership with tribal leaders and program representatives, NCAI established a Tribal TANF Task Force to develop national tribal priorities for TANF reauthorization. NCAI and the Task Force continue to advocate for further reauthorization of TANF and to advance national tribal TANF priorities. A Tribal TANF Task Force will convene on Sunday, October 9 during NCAI's Annual Convention in Phoenix, Arizona.

Legislative Update

Reauthorization of TANF. TANF was originally scheduled for reauthorization in 2010, but Congress has instead issued several extensions to maintain funding. The most recent extension of funding was in the Continuing Appropriations Resolution for 2016, which extended funding for the TANF block grant through September 30, 2016.

On July 15, 2015 the House Ways and Means Subcommittee on Human Resources held an Oversight Hearing titled "Welfare Reform Proposals and TANF Reauthorization," to encourage dialogue regarding the Discussion Draft Bill - *the Improving Opportunity in America Welfare Reauthorization Act of 2015*. To date, no formal reauthorization legislation has been introduced in the House. NCAI submitted testimony for the record urging the Congress to reauthorize tribally administered TANF grand funds, maintain flexibility in program design and evaluation and leasing rights provisions (included in H.R. 3026). The NCAI testimony is available to view here: <http://www.ncai.org/resources/testimony/u-s-house-of-representatives-july-15th-hearing-on-welfare-reform-proposals-and-tanf-reauthorization>.

H.R. 3026 – Tribal TANF Fairness Act of 2015. This bill, introduced in the House on July 10, 2015, makes a single amendment to part A (Temporary Assistance for Needy Families) (TANF) of Title IV of the Social Security Act to allow a tribal government (including one participating in an intertribal consortium) to lease land held in trust or in fee, at a fair market rate, for the administration of a tribal family assistance grant by the tribal government or the intertribal consortium. The bill was referred to the House Subcommittee on Human Resources upon its introduction and no action has been taken on it since.

Administrative Update

The Administration, through the Department of Health and Human Services, sent representatives from the Administration on Children and Families (ACF) to provide an update on tribal programs at the Tribal TANF Task Force meeting during NCAI's Executive Council Winter Session in February.

ACF released a funding opportunity in March 2015 (closed in June) for Coordination of Tribal TANF and Child Welfare Services to Tribal Families at Risk of Child Abuse or Neglect. The grant is aimed at reducing the number of out-of-home placements and the incidence of child abuse and neglect among Native American children in TANF or TANF-eligible families through effective coordination of Tribal TANF and child welfare services.

For additional information please contact Teresa Baldwin, Legislative Fellow, tbaldwin@ncai.org.

TRIBAL LABOR SOVEREIGNTY ACT

Indian tribes are sovereign governments, recognized in the U.S. Constitution. The National Labor Relations Act (NLRA) regulates labor relations between employees and private employers. Congress has recognized that it is most appropriate for each government to determine their own governmental labor policies by providing governmental exemptions for federal, state, county and city governments from the Act. Tribal governments must also be included.

The NLRA was enacted in 1935 to address growing upheavals in private industry. The Act was never designed to regulate government employment, and all governments were expressly exempted from the Act. Although the NLRA did not specifically list out every type of exempted government (e.g., the District of Columbia or Indian tribes), the NLRB consistently interpreted the government exemption to include the District of Columbia and tribal governments. But in 2004 the NLRB did an about-face and, without either consulting tribes or writing new regulations, the NLRB declared that Congress intended the Act to apply to tribal governments after all. This interpretation of the law is diametrically opposed to Congress's stated intention to exempt governments. Overnight, tribal governments became the only governments to be subject to the NLRA. Over 90,000 other units of government, who employ over 21 million Americans, are not subject to the NLRA.

Congress's wisdom in exempting governments from the Act is plain. Applying a private sector model of forced collective bargaining over all conditions of employment, under the threat of protected strikes, is a formula for interruption of governmental services. A government would have to choose between surrendering its right to enact laws, or to permit government itself be shut down by work stoppages. This is particularly problematic for tribal governments who lack any type of effective tax base. Tribal economic activities are as critical to the delivery of essential government services as is a tax base to any other government. Unlike private businesses, no government can safely shut down operations because of labor disputes. Tribal police and fire departments, schools and hospitals, courts, and tribal legislatures must stay open. Likewise, it is a basic aspect of tribal sovereignty for Indian Nations to control relations with our governmental employees on our tribal lands. A tribal exemption from the NLRA is crucial to our existence as sovereign tribal governments.

The Tribal Labor Sovereignty Act builds upon a principle that has been long established by Indian tribes across the country: when tribal sovereignty is respected and acknowledged, successful, accountable and responsible governments follow. This is not merely a legal issue but a moral imperative of protecting and defending the sovereignty of America's Indian Tribes, and guarding against any discrimination against those Tribes.

Legislative Update

Tribal Labor Sovereignty Act of 2015, S. 248 & H.R. 511. The Tribal Labor Sovereignty Act, H.R. 511, passed the House of Representatives with bi-partisan support on November 17, 2015. The bill and its companion, S. 248, are pending in the Senate. The TLSA is a critical part of Congress's efforts to respect the sovereignty of tribal governments, and does so by adding "tribes" to the definition of government entities exempt from the National Labor Relations Act.

The bill is now ready for a vote in Senate, and we need 60 votes. Tribal governments are seeking action on this legislation in the remaining days of this Congress.

For more information please contact Denise Desiderio, Policy Director, ddesiderio@ncai.org.

VIOLENCE AGAINST WOMEN ACT IMPLEMENTATION

The Violence Against Women Reauthorization Act (VAWA) of 2013 included historic provisions that reaffirm tribal criminal jurisdiction over non-Indians in certain domestic violence cases. This provision took effect nationwide on March 7, 2015. As of that date, any Indian tribe who meets the statutory requirements is able to prosecute non-Indians who abuse Indian women on tribal lands for the first time since the *Oliphant v. Suquamish* decision. Importantly, there are a number of due process requirements that must first be met. NCAI has developed a website to assist tribes as they implement the new law: <http://www.ncai.org/tribal-vawa>.

In the three years since VAWA 2013 was enacted, a group of 45 tribes have been participating in the Inter-Tribal Technical Assistance Working Group (ITWG) established by DOJ, which is a collaboration of tribes sharing information and advice on how to best implement VAWA, combat domestic violence, recognize victims' rights and safety needs, and safeguard defendants' rights. As of Sept. 2016, we are aware of 12 tribes who have implemented VAWA. They are: the Tulalip Tribes, the Pascua Yaqui Tribe, the Confederated Tribes of the Umatilla Reservation, the Assiniboine & Sioux Tribes of the Ft. Peck Reservation, the Sisseton Wahpeton Oyate, the Seminole Nation of OK, the Eastern Band of Cherokee Indians, the Nottawaseppi Huron Band of Potawatomi, the Kickapoo Tribe of OK, the Sac and Fox Nation of OK, and the Standing Rock Sioux Tribe. The implementing tribes report that the majority of the cases so far involve children as witnesses or victims and that the offenders frequently have a history of frequent prior police contacts. Materials from the implementing tribes are available on NCAI's website and offer useful examples of how individual tribes have modified tribal code language and constructed jury pools for VAWA cases.

In September of 2016, the Department of Justice awarded \$2.1 million in grants to 7 tribes to support implementation of Special Domestic Violence Criminal Jurisdiction. This was the first time funding was made available since the law was enacted in 2013. The seven tribes receiving funding are: the Tulalip Tribes, the Confederated Tribes of the Chehalis Reservation, the Port Gamble S'Klallam Tribe, the Grand Traverse Band of Ottawa and Chippewa Indians, the Little Traverse Bay Band of Odawa Indians, Santa Clara Pueblo, and the Yurok Tribe.

All tribes seeking to implement special domestic violence criminal jurisdiction (SDVCJ) are encouraged to join the Intertribal Technical-Assistance Working Group (ITWG) or contact tribal-vawa@ncai.org for more information or with any questions.

Legislative Update

The ITWG has identified a number of areas where additional Congressional action would improve implementation of the VAWA jurisdiction provision. Most notably, tribal prosecutors for the pilot tribes have expressed frustration that their jurisdiction is limited to domestic or dating violence crimes, and, as a result, they are not able to charge defendants for crimes related to abuse or endangerment of a child or for other crimes, including property or drug crimes, that might have co-occurred with the domestic violence incident. Tribes have also expressed concern that they have no jurisdiction over non-Indian domestic violence defendants for any crimes they might commit within the criminal justice system, including perjury, assaulting a bailiff, obstruction of justice, and other crimes. Tribes considering implementation also continue to raise concerns about the costs associated with implementation. Last year Congress appropriated \$2.5 million for these purposes, but significantly more is needed.

Senators Tester and Franken introduced S. 2785, the Tribal Youth & Community Protection Act in May, which would expand tribal jurisdiction over non-Indians to fill many of these gaps. The bill was reported favorably by the Indian Affairs Committee in June, but is not expected to be taken up by the full Senate this year.

Administrative Update

The tribes participating in the ITWG have also identified a number of issues related to VAWA implementation that require Administrative action. Tribes have asked the BIA to clarify its policies related to the arrest and detention of non-Indians. They have also asked for guidance about the provision of health care to non-Indian inmates.

In addition, tribes are seeking full and effective access to the National Crime Information Center databases. The Department of Justice's selection of 10 tribes to participate in the Tribal Access Program Pilot Project, is a positive step which will facilitate NCIC access for these tribes. NCAI will continue to urge full participation for all tribes.

For additional information please contact Virginia Davis, Senior Policy Advisor, at 202.466.7767 or vdavis@ncai.org

VICTIMS OF CRIME ACT FUNDING

American Indian and Alaska Natives experience the highest crime victimization rates in the country: American Indians and Alaska Natives are 2.5 times more likely to experience violent crime than other Americans; more than 4 in 5 American Indians and Alaska Natives have experienced intimate partner violence, sexual violence and stalking in their lifetime; and due to exposure to violence, Native children experience rates of post-traumatic stress disorder at the same levels as Iraq and Afghanistan war veterans.

Despite these devastating rates of victimization in tribal communities, Indian tribes have largely been left out of the Crime Victims Fund (CVF), which is the federal government's principle means of providing resources to crime victims.

The CVF was established by the Victims of Crime Act in 1984. Congress created the CVF based on the idea that money which the government collects from criminals should be used to help those victimized by crime. Fines paid by convicted federal criminal offenders finance the Fund, not taxpayer dollars. Despite significant increases in collections, Congress has imposed a cap on how much is available from the CVF for crime victim services and compensation for the past 15 years. In recent years, distributions from the CVF have been about \$700 million. Collections, however, reached as high as \$2.8 billion in 2013, leaving a balance in the fund of about \$13 billion. There has been significant pressure on Congress to make this money available for crime victims, and Congress significantly increased the distributions for FY 2015 to \$2.3 billion, and again in FY 2016 to \$2.3 billion.

Unlike state and territorial governments who receive an annual formula distribution from the CVF, Indian tribes are only able to access CVF funds in one of two ways: 1) via pass-through grants from the states, or 2) by applying for a very limited number of short-term competitive, discretionary grants from the Department of Justice. In practice, pass-through funding has proven wholly unsuccessful in distributing funds to tribal victim service providers.

The vast majority of tribal victim service programs report that they are not able to access these funds at all. DOJ's competitive funding process is also problematic. All federally-recognized tribes compete with each other for a very small amount of funding. Because grants are limited to a three-year duration, this process also greatly hinders development of tribal victim service programs. Often when a grant ends, tribal programs must completely shut down.

In 2014, NCAI adopted Resolution ANC-14-048 urging Congress to establish a 10 percent allocation from the CVF for tribal governments. Recognizing the disproportionate need for victim services in tribal communities, the Office for Victims of Crime's *Vision 21* report also called for increasing resources to tribal communities in order to "ensure that victims in Indian Country are no longer a footnote to this country's response to crime victims." The Attorney General's Task Force on American Indian and Alaska Native Children Exposed to Violence similarly called for a 10 percent tribal allocation from the CVF in its 2014 report.

Legislative Update

Without additional action by Congress, tribal governments will continue to have no direct access to critical CVF funds. Congress could remedy the exclusion of tribal governments by passing authorizing language that amends the Victims of Crime Act or through the appropriations process. Given the timing, NCAI's focus for the remainder of this Congress is on ensuring that language is included in any omnibus appropriations bill that will direct 5% of Crime Victims Fund disbursements to tribal governments. Both the House and Senate Appropriations Committees adopted amendments to their respective Crime Justice and Science appropriations bills that includes a 5% allocation for tribal governments out of the overall disbursement from the CVF, which could result in up to \$140 million for tribal governments.. NCAI is working to protect this critical funding as appropriations are finalized for FY 2017.

In July of 2015, a bi-partisan group of Senators introduced S. 1704, the SURVIVE Act, which would direct 5% of the total CVF disbursement to tribal governments. The Senate Committee on Indian Affairs unanimously approved the bill at a mark-up in July of 2015, but the bill has not been taken up by the full Senate and is unlikely to move this year.

For more information please contact Virginia Davis, Senior Policy Advisor, vdavis@ncai.org.

REAUTHORIZATION OF THE TRIBAL LAW AND ORDER ACT & EXPANSION OF SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION

NCAI has urged Congress to prioritize the reauthorization of the Tribal Law and Order Act of 2010. The TLOA was a bi-partisan effort to improve the administration of criminal justice in Indian Country. All authorized funding under the TLOA expired in 2015. It is important that Congress not only reauthorize this funding, but also appropriate funds to address the crisis-level need for criminal justice in Indian Country.

The reauthorization of the TLOA should also serve as a vehicle for improvements to the Juvenile Justice system. Many Members of Congress have identified youth justice as a top priority, and Indian Country fully agrees. The Indian Law and Order Commission's "Roadmap for Making Native America Safer" discussed the disturbing reality that American Indian youth face disproportionate exposure to violence and poverty. At present, the *majority* of youth in federal detention centers are Native youth, who also make up a disproportionate percentage of the state juvenile detention population. According to the TLOC Report, youth are placed in "generally unsafe, abusive,

ineffective, and horribly expensive” situations that push them further into a life of crime. It is necessary for tribal juvenile justice systems to be able to develop alternatives to incarceration aimed at rehabilitation and treatment. We also recommend the development of tribal juvenile data collection, preventative family services, and a set-aside for the Juvenile Justice and Delinquency Prevention Act which is also up for reauthorization.

The TLOA was also a vehicle for a series of important technical improvements to the federal criminal justice laws in Indian Country. Tribal justice systems now have nearly five years of experience with implementing the law, and that implementation has led to proposals to continue to make technical amendments to improve the law. Specifically, we ask that Congress reauthorize and make permanent the *Bureau of Prisons Tribal Prisoner Pilot program*, which expired on November 24, 2014. The Pilot Program created the option to send highly violent offenders to federal corrections facilities.

Many tribes do not have the resources or personnel to adequately and safely house these types of offenders. The federal system also offers greater access to treatment, rehabilitation, and reentry programs.

NCAI has also received increasing technical feedback from tribes on criminal justice concerns. As an example, we have recommended that Congress consider updating the 18 U.S.C. 1165 regarding trespass. Trespass on an Indian reservation is treated as a misdemeanor under federal law, which may be appropriate for minor hunting and fishing trespasses. However, Indian reservations are experiencing increasing problems with serious criminal trespass and a lack of deterrence. Tribes are unable to address problems with sexual assault and stalking offenders who continue to return to the reservation to harass victims. Tribes also have difficulties with former lease tenants who overstay agricultural and residential leases for many years and refuse to leave or pay rent. Tribes are also experiencing problems with timber theft, repeated poaching, illegal mining and illegal marijuana operations. The Indian Country trespass crime should be updated to increase penalties and deterrence for those who cause serious threats to persons and loss of property.

Legislative Update

On May 11, 2016 Senate Committee on Indian Affairs Chairman Barrasso (R-WY) introduced S. 2920, a bill to reauthorize the Tribal Law and Order Act (TLOA) of 2010. This legislation was reported out of the Committee in June of 2016 and is ready for a vote by the full Senate.

S. 2920 would extend the BOP Pilot Project, require consultation with tribes regarding the integration of diverse funding for law enforcement, public safety, and substance abuse and mental health programs, address criminal trespass, and require notice to tribes when a member youth enters a state or local justice system, among a number of other important provisions. In testimony, NCAI has suggested a number of additions to continue to improve public safety, including a proposal to allow tribes to contract directly for all available law enforcement funding, to improve declination reporting, and eliminate the requirement of “Indian” status for the Major Crimes Act.

For more information please contact John Dossett, General Counsel, john_dossett@ncai.org

EMERGENCY RESPONSE/HOMELAND SECURITY

Tribal leaders and the NCAI continue to advocate for parity in protecting the homeland. Since 2003, 98.75% of total Department of Homeland Security (DHS) funding has gone to state and local governments (\$40 billion vs. \$50 million). The Department of Homeland Security and its component departments, such as Customs and Border Protection, the Federal Emergency Management Agency (FEMA), and Transportation Security Administration have had mixed reviews from tribal officials in the past year regarding meaningful consultation and collaboration, upholding the federal trust responsibility in program service delivery with tribal nations, and approaches to federal grant funding through states that has been detrimental to tribal-federal government relations and tribal sovereignty. Considering DHS was only established in 2003, and in this final year before transition to a new administration, there is needed positive change to address tribal homeland security and emergency management matters regarding border crossing and tribal IDs, disaster declaration authority, emergency management capacity building, and equitable yet realistic levels of grant access and funding.

Administrative Update

Revised Tribal Declarations Pilot Guidance

The 2013 amendments to the Stafford Act provisions authorized federally recognized tribes authority to request a presidential emergency or major disaster declaration. The Federal Emergency Management conducted two consultation phases and listening sessions and is about to release the second draft of the Tribal Declarations Pilot Guidance on implementing requests for assistance. The current revision can be found on the FEMA website at: <http://www.fema.gov/fema-tribal-affairs>.

Tribal Capability Development Grants

Tribes continue to request that FEMA amend the Emergency Management Performance Grants (EMPGs) which funds states' emergency management programs. States can include tribes in the distribution of these funds but rarely do even if tribes meet state-determined criteria. While Congress has prohibited states from placing undue burdens on potential tribal recipients, this is still often the case. Creating a separate, and direct tribal capability development grant and allocation for tribes to develop basic emergency services programs would eliminate the need to change the states' much protected EMPT and allow tribes to further develop their capacity and capabilities in administering these programs. In keeping with the government-to-government relationship between tribes, Congress and the federal government, tribes are seeking direct funding for this program to ensure tribal needs are met and are not restricted by state barriers.

Tribal Homeland Security Grant Program

Budget increases are necessary for tribes to meet homeland security challenges through the Tribal Homeland Security Grant Program (THSGP). The current allocation formula by Congress is less than \$2 million but the DHS Secretary has made \$10 million available in competitive grants for a small portion of the 566 federally recognized tribal governments, but this program has remained stagnant for several years. Additionally, this program faces continued administrative threats with Agency recommendations that would combine all national preparedness grant programs into one program available only to the States. Tribal leaders are urged to propose legislative changes that will directly fund EMPGs to tribes and to request a minimum 100 percent increase in THSGP funding. Furthermore, NCAI encourages Congress to eliminate THSGP's "directly eligible tribe" status and allow all tribes to apply. Tribes must be

provided adequate funding in a homeland security programmatic grant to meet the minimum requirements recently established by FEMA and those that already do should be allowed to use this funding for other homeland security efforts and to meet other existing unfunded mandates.

FEMA Proposed Rule to Establish a Deductible for FEMA's Public Assistance Program

Tribal officials are expressing disappointment and concern over FEMA's Advanced Notice of Proposed Rule to Establish a Deductible for FEMA's Public Assistance Program, in the Federal Register on January 20, 2016.(<https://federalregister.gov/a/2016-00997>). The disaster deductible would require a predetermined level of financial or other commitment from a grantee tribe, state, or territorial government, before FEMA will provide assistance under the Public Assistance Program when authorized by a presidential major disaster declaration.

Tribes have only recently begun to exercise direct federal disaster declaration authority and disaster declaration policies and procedures are not finalized, and establishing a deductible will complicate tribal participation. Tribes are in the process of developing comments to the Revised Tribal Declarations Pilot Guidance and to force limited technical tribal staff to undergo review barrage of additional disaster declaration policies is unduly burdensome. The total cost of tribal disasters is far less than 1% of the disaster assistance provided to states and territories and should not have to consider financial commitment. Several tribes have submitted comments before the comment period closed on March 20, 2016.

National Advisory Council

The Federal Emergency Management Agency (FEMA) supports the National Advisory Council (NAC), which was established by the enactment of the Post-Katrina Emergency Management Reform Act of 2006 to ensure effective and ongoing coordination of Federal preparedness, protection, response, recovery, and mitigation for natural disasters, acts of terrorism, and other manmade disasters. The NAC advises the FEMA Administrator on all aspects of emergency management. The authorizing statute requires participation from tribal government experts, but FEMA limits participation to two tribal representatives and does not proactively share NAC activities with American Indian or Native Alaskan leaders. To strengthen the whole community doctrine the Secretary of Homeland Security should set up and fund a DHS Tribal Advisory Council or a Tribal Government Working Group under the Homeland Security Advisory Council, to provide timely and direct recommendations on tribal homeland security considerations and issues.

Tribal Border Security Summit

The DHS has yet to work with all appropriate and impacted tribes to assess tribal government tribal homeland security capacity and formulate a deliberate border security strategy, similar to state-directed activities. There are 30 tribes within 100 miles of international borders, fabricated borders, and 50 more within 150 miles. Providing tribes with adequate homeland security for tribal communities which are the first perimeters of this country will result in an overall safer nation, and would seem to be part of the federal trust responsibility of appropriate DHS components. A national tribal border security strategy summit should be planned, coordinated and supported by DHS.

Countering Violent Extremism

As the administration shifts its focus to countering homegrown violent extremism, tribal governments must be part of those efforts. As noted above, when tribes are absent from the discussions and decision-making, the government leaves an integral governmental partner out of the equation, leading to limited access to the training, funding, and key infrastructure needs of not only Indian Country, but surrounding

communities as well. DHS should consider every opportunity to include the 567 federally-recognized tribes in its decisions. A national dialogue on both existing and emerging homeland security matters with tribal leaders and staff should occur at a DHS hosted conference. Such a conference would provide DHS staff an opportunity to work with tribal government counterparts and have open discussion on these matters.

For more information please contact Robert Holden, Deputy Director, rholden@ncai.org.

EDUCATION

The education is an important factor in the development and achievement of Native children and students. Providing best quality education for Native students in tribal communities is critical to the building a vibrant workforce and booming tribal economy. In order to make this a realization, tribes need to deliver a high-quality, culturally-appropriate education that is beneficial to all Native students especially the children. As technology advances and advance education degrees are becoming the norm, it is essential for education in tribal communities to be successful in generating wealth and personal advancements, which improves social and economic welfare of tribal members and communities, factors that are necessary for the improving tribal sovereignty and ensuring tribes' cultural vitality.

Approximately 620,000, or 93 percent, of Native children are currently enrolled in public schools, both urban and rural, while 45,000, or 7 percent, attend schools within the Bureau of Indian Education (BIE) system. There are 184 BIE-funded schools (including 14 peripheral dormitories) located on 63 reservations in 23 states. In addition, there are currently 34 accredited Tribal Colleges and Universities (TCUs) in the United States serving more than 30,000 Native students. Regardless of where they attend school, the majority of Native students are not receiving a high-quality education that is also rooted in their language or culture – the core of their identity. Tribes, Native parents and families, and communities are best suited to influence these critical factors for academic success. Effectively reaching all Native students requires a concentrated effort from multiple partners: tribes, the federal government, and State Education Agencies.

Legislative Update

Johnson-O'Malley Supplemental Indian Education Program Modernization Act, S. 2842. Introduced by Senator Heitkamp (D-ND) in April, this legislation would amend the Johnson- O'Malley (JOM) Act which awards supplemental assistance to tribal organizations, school districts, and other partner organizations to address the unique cultural and academic needs of Native American students. The bill directs the Secretary of the Interior to take all practicable steps to ensure full participation of all qualified students in the JOM program; facilitates a coordinated, proactive effort to identify tribal organizations and school districts to ensure participation in JOM programs; requires the Secretary to provide a count of eligible Indian students based on available data, and directs DOI to consult with JOM contractors to reconcile available data to establish an accurate count for future years; ensures consultation by the Secretary with federally recognized tribes and school districts with currently unserved Native student populations; and requires an annual program assessment report to Congress.

In May, the Senate Committee on Indian Affairs held a hearing to receive testimony on S. 2842. Companion legislation, H.R. 4390, was introduced in the House in January.

Native American Education Opportunity Act, S. 2711. Introduced by Senator McCain (R-AZ) in March, the Native American Education Opportunity Act, would provide additional education options for Bureau of Indian Education (BIE) students who live in states that operate education savings account (ESA) programs, which include Arizona, Florida, Mississippi, Nevada, and Tennessee. The impetus of the ESA program is to direct state funds designated for a child's education into a parent's account to offer parents a choice in funding programs and services for their child such as private school, tutoring, online courses, special needs services, or saving unspent funds for higher education. Note that the funds

disbursed under this program would be in lieu of the student attending a BIE school and not supplemental to those funds.

In April, the Senate Committee on Indian Affairs held an oversight hearing on S. 2711 and the bill was reported out of the Committee with an amendment in the nature of a substitute in September of this year.

Reforming American Indian Standards of Education Act (RAISE Act), S. 2580. In February Senator Barrasso (R-WY) introduced the RAISE Act. The legislation would create the Indian Education Agency as an independent agency within the Department of the Interior. The Indian Education Agency would be headed by a Director, appointed by the President with the advice and consent of the Senate. The Director would then appoint an Assistant Director of Education Curriculum and an Assistant Director of Facilities Management. The bill would transfer to the Director any function or authority relating to Indian education that was previously performed or carried out by the Secretary or any bureau, office or other unit of the Department of the Interior. The bill also requires, upon consultation with affected tribes, a report from the Director on activities of the Indian Education Agency; assessment of the effectiveness of the RAISE Act; and recommendations for legislation to improve the Agency. The report would be presented to the SCIA, the House Committee on Natural Resources, and the House Committee on Education and the Workforce. The RAISE Act was reported out of the Senate Committee on Indian Affairs in May, and is waiting for full Senate consideration.

Safe Academic Facilities and Environments for Tribal Youth Act (SAFETY Act), S. 2468. Introduced by Senator Tester (D-MT) in January, this legislation addresses education-related facilities needs in Indian Country, which includes Impact Aid schools, Tribal Colleges and Universities (TCUs), Department of Education, and Bureau of Indian Education (BIE) schools. The bill would establish a demonstration grant program to allow eligible Indian tribes and TCUs to address improvements and construction of BIE educational facilities and TCU equipment and facilities; provide housing assistance funding to educators working for BIE schools, and public schools with large American Indian or Alaska Native populations; and it would create federal agency accountability by requiring the BIE and the Office of Management and Budget (OMB) to develop a 10-year plan to bring all BIE schools into good condition, while requiring a Government Accountability Office (GAO) Report on the needs of Impact Aid facilities. The Senate Committee on Indian Affairs held an oversight hearing and approved by the Committee in April. It is currently waiting for full Senate consideration. A House companion bill, H.R. 4744, was introduced in March 2016 by Representative Kirkpatrick (D-AZ) and it still awaits further action.

Tribal Early Childhood, Education and Related Services Integration Act of 2015, S. 2304. Introduced in November 2015 by Senator Jon Tester (D-MT). The bill would amend the Native American Programs Act of 1974 to provide tribes and tribal organizations the ability to obtain technical assistance and training to administer new childhood education initiatives, better access to early childhood education resources, and coordination among six early childhood initiatives operated by the Department of Health and Human Services. The bill also bolsters infrastructure and the recruitment and retention of teachers by providing supplementary funding for school structures and extending the federal loan forgiveness program for early childhood educators. The Senate Committee on Indian Affairs approved S. 2304 in April and is currently waiting for full Senate consideration. In April, a House version, H.R. 5072, was introduced by Representative Torres (D-CA) and awaits further action.

Native Educator Support and Training Act (NEST), S. 1928. In August 2015, Senator Jon Tester (D-MT) introduced the NEST Act. The bill would establish three separate scholarship programs for students that 1) seek education or school administration degrees; and 2) commit to working at least three years for a Bureau of Indian Education (BIE) school, a tribally controlled school, or any school or local education agency (LEA) serving high percentages of Native students. The bill also establishes loan forgiveness plans for educators who have taught at least five years in any tribal school or LEA serving primarily Native Americans, and extends the federal Perkins Loan Cancellation Program to BIE school educators and Native language immersion program teachers. Lastly, the NEST Act authorizes professional development grants for Native-serving elementary and secondary schools, and provides grants to institutions of higher education for Native language teacher training programs. The NEST Act voted out of the Senate Committee on Indian Affairs in April and is currently waiting for full Senate consideration. In July, Representative Raul Ruiz (D-CA) introduced House version, H.R.5700, and awaits further action.

Native Languages Legislation.

In April 2015, the *Native American Languages Reauthorization Act of 2015*, S. 1163 was introduced by Senator Udall (D-NM). This legislation reauthorizes the Native American Programs Act of 1974 through FY 2020 and revises a grant program administered by the Administration for Native Americans at HHS by decreasing the required minimum number of enrollees in Native American language nests from 10 to 5 and Native American language survival schools from 15 to 10 enrollees. The bills also increase the duration of grants provided by the program. S. 1163 passed out of the Senate Committee on Indian Affairs in May and is currently waiting for full Senate consideration. In April 2015, a House version was introduced, H.R. 2174 by Representative Ben Ray Lujan (D-NM).

In May 2015, Senator Tester (D-MT) introduced S. 1419, the *Native Language Immersion Student Achievement Act*, would establish a new grant program to support schools prekindergarten through postsecondary that use Native languages as the primary language of instruction. The grant program would be administered by the Department of Education, and would assist schools in developing, maintaining, improving, or expanding language immersion programs. S. 1419 passed out of the SCIA on February 2016 and currently waiting on full Senate consideration. As of print no companion legislation has been introduced in the House.

Reauthorization of the Head Start Act. The authorization of the Head Start Act expired in 2012 and NCAI urges Congress to reauthorize this important Act. The Head Start Act was created in 1965 during the Johnson administration to provide comprehensive services to low-income three- and four-year-old children to help prepare them to enter kindergarten by improving the conditions necessary for success in school and life. The 1994 reauthorization of the Head Start Act created an Early Head Start program in order to expand services to children from birth to age three. This Act is long due for reauthorization and NCAI will continue to advocate for reauthorization during this session of Congress.

Reauthorization of the Higher Education Act (HEA). The Higher Education Act expired at the end of 2013. The HEA provides critical funding, resources, and opportunities for both Native students in higher education as well as the institutions they attend including tribal colleges and universities (TCUs) and other minority-serving post-secondary institutions. Both the House and Senate have held a series of hearings on reauthorization of the Higher Education Act during this Congress.

Administrative Update

Tribal Consultation with Local Education Agencies. On September 26th, the Department of Education sent a “Dear Colleague” to local educational agencies (LEAs). One of the new requirement with the Every Student Succeeds Act (ESSA), is LEAs will have to consult with tribes, the letter provides Frequently Asked Questions to help LEAs in consulting with tribes.

Department of Education Negotiated Rulemaking Committee. Earlier this year, the Department Education published a proposed rule for a Negotiated Rulemaking Committee to implement ESSA. Two tribal representatives were named Aaron Payment, Chairperson, Sault Ste. Marie Tribe of Chippewa Indians and Leslie Harper (alternate), Leech Lake Band of Ojibwe, Minnesota. The Negotiated Rulemaking Committee met for three sessions in March and April. NCAI is working with National Indian Education Association are monitoring the activities of the Committee.

Bureau of Indian Education Negotiated Rulemaking Committee. On August 17th, the Bureau of Indian Affairs (BIA) published a notice of intent to establish a Negotiated Rulemaking Committee for Bureau of Indian Education regulations in accordance with the ESSA implementation. BIA is seeking tribal nominations for representatives and alternates to serve on the Committee, the deadline was October 3rd.

Bureau of Indian Education State Plan. The Bureau of Indian Education sent a letter to tribes on September 13th, that provides information on BIE’s tribal consultation regarding the development of state plans as required by ESSA. The BIE is required to develop a state Plan which details how it will implement ESSA, and how it will ensure school success and address struggling schools. In addition, BIE has to developed regulations on implementing a new accountability system which is part of the BIE state plan. BIE will hold a tribal consultation during NCAI’s Annual Convention in Phoenix, Arizona.

For additional information, please contact Gwen Salt, Policy Analyst, gsalt@ncai.org.

HEALTH

The health and wellness of tribal communities depends on a network of health, education, and wellness service providers, prevention coordination, and tribally-driven initiatives. Despite the federal government’s trust responsibility to provide health care to American Indians and Alaska Natives, American Indians and Alaska Natives continue to experience the greatest health disparities in the United States when compared to other Americans. Shorter life expectancy and the disease burdens carried by American Indians and Alaska Natives exist because of inadequate education, disproportionate poverty, discrimination in the delivery of health services, and cultural differences. These are broad quality of life issues rooted in economic adversity, poor social conditions, and decades of historical trauma.

Advanced Appropriations for IHS. Tribal leaders recognize that the responsibility for wellness of their community lies with the tribal government working in concert with their citizens and with agencies across the federal government. The Indian Health Service has been, and continues to be, a critical institution in securing the health and wellness of tribal communities, and advance appropriations are necessary for IHS. NCAI passed a resolution (ANC-14-007) requesting Congress to amend the Indian Health Care Improvement Act to authorize Advance Appropriations and to include IHS Advance Appropriations in the budget resolution and in the enacted appropriations bill.

Special Diabetes Program for Indians. At nearly 16.1 percent, the American Indian and Alaska Native population has the highest rate of diabetes among all U.S. racial and ethnic groups, and an estimated 30 percent of American Indians and Alaska Natives are pre-diabetic. In 1997, Congress addressed the growing epidemic of diabetes in American Indian and Alaska Native communities by passing the Balanced Budget Act which established the Special Diabetes Programs for Indians (SDPI).

The Special Diabetes Programs for Indians provides assistance for developing local initiatives to treat and prevent the disease and has served as a comprehensive source of funding to address diabetes issues in tribal communities by providing grants for diabetes prevention and treatment services to more than 400 Indian Health Service, tribal, and urban Indian health programs in 35 states. These grants are critical to improving the overall health of American Indian and Alaska Native people because they greatly enhance the effectiveness of preventative health programs and allow programs aimed at stopping the spread of diabetes to children and young adults to be established.

NCAI passed a resolution (ATL-14-003) requesting Congress to permanently reauthorize the Special Diabetes Program for Indians and to provide full funding for permanent continuation of this program.

Affordable Care Act/Indian Healthcare Improvement Act Implementation. The Patient Protection and Affordable Care Act (ACA) provided for permanent reauthorization of the Indian Health Care Improvement Act, ending a 17-year effort for reauthorization. Tribes are adamantly opposed to repeal of the ACA. However, if this Congress takes up specific provisions of the bill, tribal leaders will seek a fix to the definition of Indian within the ACA. There are three separate definitions of Indian throughout the ACA which creates inconsistency in eligibility for certain benefits. Tribes seek consistency in the definitions to ensure that all American Indians and Alaska Natives have access to the special benefits and protections.

NCAI passed a resolution (ABQ-10-080) requesting that one definition of “Indian” be recommended in implementation of the Affordable Care Act, providing support for the definition of “Indian” that was adopted by the Centers for Medicare and Medicaid Services in its implementation of the Medicaid cost sharing protections (45 C.F.R. 447.50), limiting the use of the definition to implementation of the Affordable Care Act, and prohibiting the use of the definition or interpretation to affect who is eligible for services.

Behavioral Health. In 2007, the National Center for Health Statistics noted that American Indians and Alaska Natives experience serious psychological distress one and a half times more than the general population. Data from the Centers for Disease Control and Prevention reveal that the suicide rate for American Indian and Alaska Native adolescents and young adults from 15-34 is two and a half times the national average for that age group. Unlike other groups where the suicide rate increases with age, American Indian and Alaska Natives rates are highest among the youth and decrease with age. Holistic behavioral and mental health services designed and implemented by and for American Indian and Alaska Native people are needed to promote cultural strength and healing. New initiatives such as First Kids First and Generation Indigenous (Gen-I) are also critical to promoting wellness with our children and youth.

The Substance Abuse and Mental Health Services Administration (SAMHSA) has released an early draft of its Tribal Behavioral Health Agenda (TBHA). The TBHA was developed based on recommendations by SAMHSA's Tribal Technical Advisory Committee and in meetings with tribal leaders, tribal health administrators, tribal members, advocates for tribal health, Native youth and federal agency representations.

Those meetings led to the framework of the proposed agenda which is centered on five foundational elements that support the recognition of youth, identity, culture, self-sufficiency, data and tribal leadership. Upon release of the full draft the agency will solicit input from tribal leaders. SAMHSA is currently accepting comments on the draft TBHA and will hold a meeting at NCAI's Annual Convention to hear from tribal leaders on the contents of the plan.

Community Health Aide Program. Recognizing the need for comprehensive, quality health care in tribal communities, on June 1, 2016, Indian Health Service (IHS) released a policy statement to explore the necessary steps to expand the use of Community Health Aide Programs (CHAP) throughout Indian Country. The CHAP program would fund nursing aides, behavioral health aides, and in some cases, mid-level dental providers called Dental Health Aide Therapists (DHAT), along with other types of community health workers, to ensure residents of rural communities have access to health services.

The IHS is seeking input from tribal leaders and stakeholders on the Draft Policy to expand the CHAP program. IHS has extended the consultation period for the CHAP draft policy until October 27th, 2016. Tribes can submit their comments to consultation@ihs.gov. In addition to accepting comments electronically, IHS will be facilitating in person tribal consultations at the NCAI Annual Conference in Phoenix, Arizona on October 9th, 2016.

Oral Health. American Indians and Alaska Natives face significant disparities in oral health when compared to the United States population. American Indians and Alaska Natives lack access to dentists, consistent dental treatment, and prevention services. By age five, 75 percent of American Indian and Alaska Native children have experienced tooth decay. Poor oral health has been linked to decreased school performance and other health complications, including diabetes, chronic pain, infections, nutritional deficiencies, childhood growth and social development, and loss of teeth. This is compounded by low dentist to patient ratios, identified backlog of treatment, and grossly inadequate expenditure levels.

Mid-level providers such as Dental Health Aide Therapists (DHATs) are the solution to this crisis. For more than 90 years the DHAT model has been used worldwide, and for over 10 years has been used in Alaska, where the Alaska Native Tribal Health Consortium (ANTHC) adopted the model in 2003. The model builds community capacity and creates jobs by training community members to become DHATs. The Indian Health Care Improvement Act, as enacted by the ACA, limits expansion of the DHAT model to the lower 48. NCAI believes that tribes have the sovereign right to address the oral health needs in their communities through mid-level providers.

Catastrophic Health Emergency Fund (CHEF) Consultation. On May 10, 2016 the Indian Health Service requested public comment on a proposed regulation for the Catastrophic Health Emergency Fund (CHEF). The comment period for the Proposed Rule will close on October 31st, 2016. The purpose of the CHEF regulations is to meet the extraordinary medical costs associated with the treatment of victims of disasters or catastrophic illnesses who are eligible to receive service at the Indian Health Service. NCAI submitted comments on the proposed regulations detailing concerns that (1) the rule would shift more financial

burden onto tribal resources by expressly redefining “alternate resources” to include tribes and tribal self-insurance programs as a primary payor; (2) the IHS is listed as the payor of last resort contrary to language in the Affordable Care Act, and (3) there was not meaningful consultation on the development of the proposed regulations. These comments were developed based on an NCAI resolution (ECSW-16-003). On June 1, 2016, a Dear Tribal Leader Letter was released by IHS stating that additional tribal consultation would occur before any final action by the agency. IHS will facilitate in-person tribal consultation sessions at the NCAI Annual Conference on October 9th in Phoenix Arizona. Written comments by Tribes and Tribal Organizations can be e-mailed to consultation@ihs.gov by October 31st.

Legislative Update

Advance Appropriations for the Indian Health Service On January 14, 2015, Rep. Don Young (R-AK), along with Rep. Ben Ray Lujan (D-NM), introduced the “*Indian Health Service Advance Appropriations Act of 2015*” (H.R. 395). Advance appropriations will ensure that the Indian Health Service and tribal health care providers have adequate advance notice of the amount of federal appropriations to expect to administer health programs and services to American Indian and Alaska Native people and thus not be subjected to the uncertainties of late funding and short-term continuing resolutions. To date, there is no companion legislation in the Senate. NCAI will continue to encourage action on advance appropriations for IHS in this Congress.

Special Diabetes Program for Indians. The Special Diabetes Program for Indians was last reauthorized on April 16, 2015 and was extended through September 30, 2017. The extension of the SDPI program was included in the Medicare Access and CHIP Reauthorization Act of 2015. Although this extension of SDPI is welcome, NCAI continues to advocate for permanent reauthorization and full funding of this vital program.

Employer Mandate. There are currently Senate and House companion bills that would provide an exemption for Indian tribal governments and tribally owned business from the Employer Shared Responsibility Mandate. S. 1771 was introduced by Senator Daines in July of 2015 and referred to the Senate Finance Committee. In the House, Congresswoman Noem introduced H.R. 3080, which was voted out of the House Ways and Means Committee in July of this year and is ready for full House action.

The employer shared responsibility mandate, effective January 1, 2015, requires tribes with 50 or more full-time and/or full-time equivalent employees (FT/FTE) to offer health coverage to full-time employees (and their dependents) or face significant penalties. Many tribal employers cannot afford to purchase health coverage for their employees and would have to sacrifice other programs and services to try and meet the requirement. As the work forces of many tribes are made up of tribal members, most of their employees are exempt from the mandate and a tribal employer should not be required to offer or pay for such coverage. Many tribal employers rely upon the Indian Health Service to provide health care to tribal member employees as part of the federal trust responsibility and do not offer health coverage on this basis.

Throughout ACA implementation, tribes have been informed by HHS and the Center for Consumer Information and Insurance Oversight (CCIIO) that the special benefits and protections for American Indians/Alaska Natives under the ACA support the federal trust responsibility and have been encouraged to carry this message to tribal citizens to encourage enrollment in the Marketplace. Many tribes have sponsored trainings and hosted enrollment events for tribal members, and many have even implemented premium sponsorship programs.

The application of the employer mandate to tribes is inconsistent with the federal trust responsibility because it denies tribal member employees the opportunity to take advantage of the special benefits and protections available to American Indians/Alaska Natives. In 2015, if a tribal employer offers coverage that meets the requirements of the mandate to tribal member employees the tribal member employees will be disqualified from receiving a premium tax credit, making the coverage unaffordable and the American Indian/Alaska Native cost sharing exemptions inaccessible. The tribal member employees would then be faced with having to pay for less beneficial employer coverage (e.g., a portion of the employee premium, 100 percent of dependent coverage, and high cost sharing) or opt for having no coverage.

If a tribal employer decides not to make an offer of health coverage to full-time tribal member employees, these employees would be eligible for a premium tax credit in the Marketplace. Receipt of a tax credit by one full-time employee subjects the employer to a penalty of \$2,000 per employee per year multiplied by the number of full-time employees. Even if a tribal employer offers coverage, a tribal employer could incur the second type of penalty if the coverage is not affordable or does not provide minimum value, allowing a full-time tribal member employee to receive a tax credit. In this case, the penalty would be \$3,000 per year multiplied by the number of full-time employees who have received a tax credit.

The IRS and CCIIO policies conflict with each other. Tribal employers should not have to decide between: complying with the mandate which denies tribal members' benefits to which they are entitled, and paying costly insurance premiums which they cannot afford for tribal members who are exempt from the individual mandate; or allowing tribal members to access the benefits at the expense of paying costly penalties to the federal government when the federal government has a trust responsibility to provide health care to American Indians/Alaska Natives.

Pharmacy and Medically Underserved Areas Enhancement Act. On January 28, 2015, Rep. Brett Guthrie (R-KY) introduced the “*Pharmacy and Medically Underserved Areas Enhancement Act*” (H.R. 592) and on January 29, 2015, Sen. Chuck Grassley (R-IA) introduced the (S. 314). The Pharmacy and Medically Underserved Areas Enhancement Act would recognize pharmacists as non-physician providers under Medicare Part B and make them eligible for reimbursement for services they provide to seniors in underserved areas. It will allow pharmacists to deliver care to patients in medically underserved communities (medically underserved areas, underserved populations and health professional shortage areas as defined by the Health Resources Service Administration). This legislation will help with provider shortages and access issues for Medicare beneficiaries and will benefit American Indians and Alaska Natives who are living in medically underserved communities.

Comprehensive Addiction and Recovery Act. On February 12, 2016, S. 524, the Comprehensive Addiction and Recovery Act (CARA), was introduced by Senator Sheldon Whitehouse (D-RI). The bill will support the ongoing fight against heroin and opioid abuse in Indian Country. The bill directs the Department of Health and Human Services to formally assemble a Pain Management Best Practices Inter-Agency Task force. The bill also helps to create funding to support efforts to reduce heroin and opioid addiction through the creation of grants. CARA will amend the Omnibus Crime Control and Safe Streets Act of 1968 and will authorize the Attorney General to make grants to tribes along with states and local governments to expand prevention education as well as promote the understanding of addiction as a chronic disease while promoting treatment and recovery.

CARA implements a concentration on treatment, focusing on the development of programs for individuals with juvenile or criminal justice system history, for those who have a substance abuse disorder or a mental illness, by offering alternatives to incarceration. CARA will also support tribal law enforcement agencies to develop demonstration law enforcement programs that work to prevent opioid and heroin overdose deaths.

CARA was passed by the House of Representatives on July 8th and by the Senate on July 13th, 2016. President Obama signed the bill on July 22nd, 2016.

IHS Accountability Act of 2016. On May 19, 2016, Senator Barrasso (R-WY) introduced S.2953 the IHS Accountability Act of 2016. On September 21st, the Senate Committee on Indian Affairs ordered it favorably out of committee. The bill recognizes the long standing issues at the Indian Health Service by addressing patient safety and quality of care issues as well as employee recruitment and retention needs. The bill will also require tribal consultation, in the designated region, prior to hiring key leadership positions. On June 16, 2016, the Senate Committee on Indian Affairs held a town hall meeting in Rapid City, South Dakota to discuss the provisions in S. 2953. An oversight/legislative hearing was held the following day on "Improving Accountability and Quality of Care at the Indian Health Service through S. 2953."

Tribal Veterans Health Care Enhancement Act. On December 17, 2015, Senator Thune (R-SD) introduced S. 2417, the Tribal Veterans Health Care Enhancement Act. The bill will allow the Indian Health Service to cover the cost of co-payments for Native American/Alaska Native veterans that receive medical services from the Department of Veterans Affairs. On June 8, 2016, the Senate Committee on Indian Affairs favorably reported S. 2417 out of Committee. The bill is now ready for full consideration by the Senate.

Administrative Update

Affordable Care Act. Several issues remain or have emerged with implementation of the Affordable Care Act, including, to name a few: inadequate or incomplete data on American Indian/Alaska Native enrollment in qualified health plans (QHPs); concern about network adequacy and the lack of QHPs contracting with Indian health care providers; the availability of cost sharing protections to American Indians and Alaska Natives with incomes below 100% of the federal poverty level; and the need for an American Indian/Alaska Native Customer Service Unit (NCAI passed a resolution ATL-14-074) knowledgeable on the American Indian/Alaska Native special benefits and protections.

Medicare Like-Rates. Tribes submitted comments on the IHS Proposed Rule entitled "Payment for Physician and Other Health Care Professional Services Purchased by Indian Health Programs and Medical Charges Associated with Non-Hospital-Based Care," 79 Fed. Reg. 72160 (Dec. 5, 2014). The final regulations have not been issued.

Employer Mandate. Members of HHS Secretary's Tribal Advisory Committee recently discussed concerns about the employer mandate with the Secretary. Tribal leaders also engaged with the Department of the Treasury on a conference as well as during the Direct Services Tribal Advisory Committee, and the Secretary's Tribal Advisory Committee. The Department of the Treasury has taken the position that an administrative fix is not available. Tribal leaders are now seeking a one year Administrative delay of the mandate to determine a longer term solution. NCAI will continue to work with other national organizations, tribes, and the Administration to address this issue.

For additional information please contact Denise Desiderio, Policy Director, ddesiderio@ncai.org.

CHILD WELFARE

The federal government has unequivocally recognized that there is nothing more vital to the continued existence and integrity of Indian tribes than our children. The federal government must empower tribes to safeguard children and strengthen families. Tribal welfare programs are comprised of a number of “discrete, yet interconnected” functions that include family social services, child protection, case management, foster care, foster home recruitment, permanent placement, court hearings, coordination and collaboration under the Indian Child Welfare Act (ICWA), and referrals to other services.

Tribal child welfare programs work tirelessly to service children and families and are working to implement holistic, strengths-based, culturally appropriate, and family-centered services. Throughout Indian Country, tribes implement innovative child welfare services such as family group decision-making processes, peacemaking courts, Positive Indian Parenting classes, culture camps, and customary adoptions to protect and support children while keeping them connected to their families and communities. In providing these services, a great number of tribes work simultaneously, in numerous jurisdictions across the country, to defend tribal and family rights threatened by state child welfare and court systems. Tribes’ enduring service to children, families, and communities persists in the face of elevated risks of child abuse and neglect.

During this Congress, several pieces of legislation address tribal child welfare issues, including the creation of a Native American/Alaska Native Children Commission to conduct a comprehensive study on the needs of Native children both at the local level and nationally. Moreover, other bills seek to address funding for mental health and substance abuse prevention including treatment services and in-home parenting skills based programs. Requiring background checks for foster care placement in tribal court proceedings under the Indian Child Protection and Family Violence Prevention Act also promotes child safety. In addition, federal agencies are working to address long-overdue federal policies that reinforce the underlying goals to protect Native children in state court proceedings under ICWA. ICWA requires the implementation of uniform regulations and guidelines to help address the continued misapplication and misinterpretation by state courts that continue to negatively affect families and tribal communities.

NCAI urges Congress and the Administration to prioritize the safety and well-being of all children and to promote stability and security for Native children, their families and tribes.

Legislative Update

The Family First Prevention Services Act of 2016, S. 3065 & H.R. 5456. On June 16, 2016, Senator Orrin Hatch [R-UT] introduced the Family First Prevention Services Act, a bill to amend parts B and E of title IV of the Social Security Act to invest in funding prevention and family services to help keep children safe and supported at home, to ensure that children in foster care are placed in the least restrictive, most family-like, and appropriate settings, and for other purposes. Under this proposed law, tribes could use foster care money to provide preventative services and support to keep families together.

H.R. 5456 passed through the House Ways & Means Committee on June 23, 2016. S. 3065 was referred to the Senate Committee on Finance.

Family Stability and Kinship Care Act of 2015, S. 1964 and H.R. 3781. Currently, the federal child welfare finance system provides significantly more funding for the removal of children from their families than services that could safely maintain them in their homes. When children are removed from their homes, even to keep them safe from harm, there is always additional trauma for the child. Conversely, it is almost always more suitable and cost effective to provide supportive services to give families the tools they need to better parent their children than it is to remove them from their homes and place them in substitute care. Introduced by Senator Wyden (D-OR) on August 5, 2015, S. 1964 provides front-loaded funding that creates a real incentive for improving in-home child care and allows for more flexibility in fashioning rehabilitative programs for families. Congressman Doggett introduced a companion bill, H.R. 3781, in the House on October 21, 2015. S. 1964 has been referred to the Senate Committee on Finance, while H.R. 3781 has been referred to the House Committee on Ways and Means.

Native American Children's Safety Act, S. 184 & H.R. 1168. On January 16, 2015, Senator Hoeven (R-ND) introduced the Native American Children's Safety Act, a bill to amend the Indian Child Protection and Family Violence Prevention Act to require background checks prior to foster care placements in tribal court proceedings. On February 27, 2015, Congressman Cramer introduced a companion bill in the House. S. 184 was signed into law by the President on June 3, 2016 and is now Public Law 114-165.

Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act, S. 246 & H.R. 2751. This legislation, introduced by Senator Heitkamp (D-ND) creates an 11-member Commission on Native Children to conduct a comprehensive study on the programs, grants, and support available for Native children, both at the federal level and on the ground in Native communities. This legislation passed the Senate on June 1, 2015, and has been referred the House Subcommittee on Indian, Insular and Alaska Native Affairs. A companion bill, H.R. 2751 was introduced in the House by Congresswoman McCollum and passed through the House on September 12, 2016. This bill was also referred to the Subcommittee on Indian, Insular and Alaska Native Affairs. S. 246 was presented to the President on October 3, 2016 and is currently awaiting signature.

Administrative Update

Department of Interior Publishes Final Rule for State Courts and State Agencies in Indian Child Welfare Proceedings subject to the Indian Child Welfare Act. On June 14, 2016, the Department of Interior published its Final Rule on the Indian Child Welfare Act of 1978 (ICWA). These new regulations establish the Department's interpretation of ICWA as a binding interpretation ensuring that state courts and state agencies abide by these minimum Federal standards designed to protect the interests of Indian children, Indian families and Indian tribes involved in state child welfare proceedings. The final rule addresses requirements for state courts in ensuring implementation of ICWA in Indian child-welfare proceedings and requirements for states to maintain records under ICWA. This Final Rule will take effect on December 12, 2016.

ICWA establishes minimum Federal standards for the removal of Indian children from their families and the placement of these children in foster or adoptive homes, and confirms Tribal jurisdiction over child-custody proceedings involving Indian children. The previous ICWA regulations had a narrow scope and covered only the administration of ICWA service programs authorized under the Act. Revisions to the regulations were sorely needed and long overdue, as implementation guidance has been lacking and compliance with ICWA has been highly inconsistent since passage of the Act.

Moreover, these regulations were fashioned after consultation with tribal and child welfare stakeholders, who stressed the need for binding procedures to ensure uniform compliance with ICWA as originally intended by Congress. Absent these regulations with the force of law, state courts have largely ignored, misapplied, and misinterpreted ICWA's mandates.

These regulations will serve the best interests of the Indian child and promote uniform implementation of ICWA by: 1) ensuring early, permanent placements by mandating early agency and state court compliance in all child custody proceedings involving an Indian child, 2) providing clear steps and definitions to meet the procedural requirements of ICWA, 3) defining "active efforts" agencies and state courts must employ to prevent the breakup of the Indian family, and 4) mandating the end of emergency removal placements the moment the emergency has ended. NCAI fully supports these much-needed regulations and has provided comments stressing the need for early, uniform implementation.

Lastly, the Department of Interior also anticipates issuing updated guidelines setting its best standards and practices prior to the effective date of this rule.

The Department of Health and Human Services to require that states collect and report baseline ICWA data through the Adoption and Foster Care Analysis and reports System (AFCARS) and provide assistance to state and tribal child welfare agencies in the development ICWA data elements to enhance ICWA implementation. States are already required to report a variety of measures on the children in their care through the AFCARS system. Requirements pertaining to ICWA, including a determination of ICWA application, tribal notification, active efforts, ICWA's placement preferences, and other concerns related to Native American/Alaska Native child welfare under federal law, should be added to these data requirements for states. Including information regarding ICWA as part of state reporting requirements would provide the vital information necessary to improve federal assistance to states and tribes, monitor challenges in implementation, and effectively support improved tribal-state relations in child welfare. However, the Administration for Children and Families (ACF) has never collected ICWA related data. Under the Supplemental Notice of Proposed Rulemaking, published on April 7, 2016, ACF proposes to collect ICWA- related data on Native American/Alaska Native children in child welfare systems for several uses in the public interest including: assessing the current state of foster care and adoption of Indian children under ICWA, to develop future national policies concerning ACF programs that affect Indian children and to meet federal trust obligations under established federal policies. Furthermore, at the point ICWA data elements are included as required AFCARS data elements, states and tribes will need assistance to ensure that state data elements meet the AFCARS requirements and provide accurate and reliable data that can benefit states and tribes, as well as Native American/Alaska Native children and families. The new Administration can use this set of proposed rules to continue supporting effective tribal and state collaboration in data collection under ICWA. NCAI strongly supports inclusion of ICWA data elements in AFCARS. The AFCARS Final Rule is expected late 2016.

For additional information please contact Julian Nava, Staff Attorney, jnava@ncai.org.

CULTURAL PROTECTIONS

The protection of Native cultures spans across complex statutory and regulatory aspects of the federal government. Success in navigating these complex structures has resulted in the repatriation of cultural items, guidance regarding tribal member possession of eagle feathers, and increased access to sacred places for religious and spiritual practices. NCAI continues to prioritize its advocacy and education efforts to protect the religious freedoms of Native peoples while supporting cultural preservation efforts.

Legislative Update

NCAI supports the Safeguard Tribal Objects of Patrimony (STOP) Act On July 6th, 2016 a bipartisan coalition of Southwestern Senators introduced the Safeguard Tribal Objects of Patrimony (STOP) Act, S. 3127. New Mexico Senator Martin Heinrich introduced the bill with a coalition of bipartisan cosponsors. This legislation enhanced penalties under the Native American Graves Protection and Repatriation Act (NAGPRA) from 5 years to 10 years and also prohibits the exporting of Native American cultural objects. It also requires the Government Accountability Office to submit a report to Congress detailing the number of cultural objects illegally trafficked in the US and in foreign markets as well as detailing the extent to which the US Attorney General has prosecuted past violations. The report would also include recommendations for actions by the Attorney General, the Secretary of State and the Secretary of the Interior to eliminate illegal commerce of cultural objects as well as securing repatriation of those objects. The legislation sets up a Tribal Working Group made up of tribes and government agencies to collaborate on writing the report as well as giving tribes the opportunity to advise government agencies on implementation recommendations.

NCAI supports H. Con. Res. 122, the PROTECT Patrimony Resolution. On September 21, 2016 the US House of Representatives passed House Concurrent Resolution 122, *the Protection of the Right of Tribes to stop the Export of Cultural and Traditional (PROTECT) Patrimony Resolution*. The resolution was sponsored by Rep. Stevan Pearce (R-NM-2) with several bipartisan cosponsors. The Senate passed a similar resolution by unanimous consent on September 9th, 2016 in an effort led by Senators Tom Udall (D-NM) and Deb Fischer (R-NE). The Senate version will need a vote by the House of Representatives in order to be a joint concurrent resolution. In response to major media coverage of Native sacred, cultural, and religious items being sold in auction houses abroad, Congressman Stevan Pearce (R-NM-2) introduced the *PROTECT Patrimony Resolution* to condemn the theft, illegal possession, or sale, transfer, and export of tribal cultural items. The Resolution also calls upon the Secretaries of the Department of the Interior, Department of State, Department of Commerce, Department of Homeland Security, and the Attorney General to consult with tribes and spiritual religious leaders regarding this issue and to stop these illegal practices and repatriate items to tribes. The Resolution also requests the Comptroller General to conduct a study to determine the scope of illegal trafficking on Native cultural items domestically and abroad. NCAI will continue to work with Congress and the Administration to raise awareness on this issue and advance policies that support the repatriation of these cultural and religious items to tribes.

NCAI opposes Senate Amendment to block designation of Bears Ears as a National Monument. On March 14, 2016 NCAI sent a letter to Senate Majority Leader Mitch McConnell and Minority Leader Harry Reid stating our opposition to Senate Amendment 3447 to S. 2012, the *Energy Policy Modernization Act of 2015*. Senate Amendment 3447 to S. 2012 was filed on March 7, 2016 by Senator Mike Lee (R-UT) to block the President's authority to designate the Bears Ears area in southeastern Utah as a National Monument. The amendment was proposed but never passed by The Senate. Currently, the bill is in a conference committee where both houses of Congress are resolving the differences between the two versions. The Bears Ears area contains over 100,000 archaeological sites and holds sacred, cultural, and ceremonial significance to tribes in the region including the Hopi, Navajo, Ute Mountain Ute, Zuni and Uintah and Ouray Ute tribes. The aforementioned tribes have also formed the Bears Ears Inter-Tribal Coalition to protect and preserve this location and have been working with the Administration to get the Bears Ears designated as a National Monument to conserve and protect the area. NCAI will continue to monitor and oppose Congressional attempts to limit the President's authority to designate areas as National Monuments when those areas include tribal sacred places.

NCAI requests the renaming of “Devils Tower” to the “Bear Lodge National Monument”. On March 15, 2016, NCAI sent a letter to Chairman Bill Cassidy and Ranking Member Martin Heinrich of the Senate Subcommittee on National Parks stating our opposition to S. 2039, *A bill to designate the mountain at Devils Tower National Monument, Wyoming, as Devils Tower and for other purposes*. Throughout history many areas of tribal cultural, religious, and historical importance received different name designations by early non-tribal settlers and the federal government. These names either attempted to reflect the English translations of tribal designations, or entirely replaced them with an unrelated non-tribal description. However, in the case of “Devils Tower” early documented evidence has shown this area labeled as “Bear Lodge” by early settlers, commissioned cartographers, and the U.S. military. The Bear Lodge area also holds immense sacred, religious, and cultural importance to tribes in the region, which has been thoroughly documented by the National Park Service. NCAI’s letter referenced Resolution #SD-15-001, “In Support of the Name Bear Lodge National Monument (Currently ‘Devils Tower’)”, which was adopted at NCAI’s 2015 Annual Convention in San Diego, CA. NCAI will continue to advocate for the change of “Devils Tower” to the more culturally appropriate “Bear Lodge National Monument”.

Administrative Update

Department of the Interior will conduct consultations and requests input on repatriating tribal cultural heritage from abroad. On August 26, 2016, the Department of the Interior announced that they will be conducting government-to-government consultations and seek written comment about the repatriation of cultural items both domestically and abroad. The letter to tribal leaders reassured the Government’s commitment to helping repatriate tribal cultural heritage and how to best support international repatriation through existing authorities. Although the Department of the Interior has limited authority to repatriate items already overseas, it is exploring authorities within existing law and have looked to pending legislation to address the issue, like the *Safeguard Tribal Objects of Patrimony (STOP) Act of 2016*. As of October 3rd, 2016, the Department of the Interior has consulted with tribes once in Washington, D.C. and has future plans to conduct government-to-government consultation at the NCAI Annual Conference, Alaska Federation of Natives conference as well as in Cherokee, North Carolina on October 24-26.

Adidas Announces Support to Retire “Indian” Themed Mascots, Logos, and Names. During the 2015 White House Tribal Nations Conference executives from major sports apparel company Adidas announced the launch of an initiative to provide financial support and design resources to any US High School looking to transition away from the use of stereotypical “Indian” themed mascots, names, and logos. Since announcing the initiative it has been reported that nearly 100 schools have reached out to the company to begin discussions and plans for retiring these derogatory and stereotypical depictions of Native peoples. Adidas is the first major multinational corporation to take a public stance against the continued use of these stereotypical mascots while also offering full financial support to assist schools in retiring these outdated representations.

Protect the Badger-Two Medicine. On March 23, 2015, NCAI sent a letter to Secretary Sally Jewell of the Department of the Interior calling for the cancelation of oil and gas leases in the Badger-Two Medicine area. The Badger-Two Medicine area is located between Glacier National Park and the Great Bear and Bob Marshall Wilderness areas. This place contains sensitive plant and wild life and holds immense cultural and religious significance to the Blackfeet people.

In 1982, absent tribal consultation and a thorough review of environmental and cultural studies, the U.S. Forest Service granted 47 oil and gas permit leases in and around the Badger-Two Medicine area. For over two decades the Blackfeet Tribe of Montana and many non-Native conservation and historical preservation groups have sought the cancellation of these permit leases.

On September 21, 2015, the Advisory Council on Historic Preservation (ACHP) submitted comments and recommendations to Secretary Vilsack of the Department of Agriculture and Secretary Jewell of the Department of the Interior recommending the cancellation of oil and gas leases in and around the Badger-Two Medicine area. ACHP's recommendations were made on the grounds that the Badger-Two Medicine site is recognized as a Tribal Cultural District (TCD) and that proposed gas explorations and developments would irreparably harm the area. ACHP also recognized that proposed mitigation measures would be insufficient in resolving any adverse effects to the TCD.

In October 2015, a federal judge ruled that the Department of the Interior (DOI) must make a ruling on whether to lift suspensions on the oil and gas lease permits, or cancel them, and in November 2015, DOI announced it would move to cancel the leases by December 2015. However, as of February 2016, the oil and gas lease permits have not been cancelled by DOI yet. NCAI will continue to work with DOI to advocate for an expedited cancellation of these permits based on the long record of evidence and recommendations calling for such actions.

Protection of Tribal Sacred Places Through Presidential Declarations as National Monuments. The 1906 Antiquities Act allows the President to act in the national interest to designate National Monuments to protect areas that have cultural, historical, and environmental significance. Tribes have sought designations of certain areas, including sacred places, as National Monuments to provide such areas protections from development or otherwise invasive disturbance. There are currently a number of areas—that hold significant tribal cultural and religious significance—being considered for designation as National Monuments. For instance, NCAI last year worked with the Bears Ears Inter-Tribal Coalition and non-Native conservancy organizations to request it be proclaimed as a National Monument by the President. The Bears Ears area holds cultural and religious significance to the Hopi, Navajo, Ute Mountain Ute, Zuni, and Uintah and Ouray Ute Tribes of the southwest. NCAI will continue to work on behalf of tribes to request these Presidential proclamations to increase federal protections for these areas holding cultural and religious importance.

United Nations Ad Hoc International Repatriation Working Group. On January 21, 2016, NCAI participated in a meeting hosted by the International Indian Treaty Council and the U.S. Mission to the United Nations. The purpose of the meeting was to discuss recommendations and proposals to direct the State Department and the Department of the Interior to provide assistance to tribes to repatriate sacred items and remains held in museums and other institutions abroad. NCAI became a member of an Ad Hoc International Repatriation Working Group and is committed to working with the group's member tribes and tribal organizations in developing recommendations and assisting in the facilitation of communication and input from tribes across the country.

For additional information please contact Maria Givens, Policy Analyst, mgivens@ncai.org.

NATIVE AMERICAN ELDERS

In tribal communities, elders are held in the highest regard due to their traditional status as “wisdom-keepers” and are deserving of honor and respect. However, American Indian and Alaska Native elders are at a growing risk of financial exploitation, neglect, and abuse. In fact, it is these same elders in Indian Country that comprise the most economically disadvantaged elderly minority in the nation.

The number of American Indian and Alaska Native Elders 65 and older is expected to double by 2030. As the elder population continues to grow, so too does abuse and maltreatment of those who require care.

A 2004 profile on American Indians and crime prepared by the Bureau of Justice Statistics (BJS), and the U.S. Department of Justice (DOJ), reported that among persons in the 55 or older category, the American Indian violent crime rate was 22 per 1,000 versus the overall rate of 8 per 1,000.

The Older Americans Act (OAA) is the major federal statute that authorizes social and nutritional services to elders. These supportive services include congregate and home-delivered nutrition services; community centers; community service employment; long-term care ombudsman programs; information and referral services; and services to prevent the abuse, neglect, and exploitation of the elderly population. The OAA specifically states “it is the purpose of this Title to promote the delivery of supportive services, including nutrition services, to American Indians, Alaska Natives [SIC], and Native Hawaiians that are comparable to services provided under Title III” (grants for state and community programs on aging).

Grants to tribes have a history of being both well-managed and insufficiently funded to meet existing needs. Due to inadequate funding to carry out the purpose of Title III, “comparable services” for Native elders have not been achieved. Tribal governments have little or no access to the same agencies, departments, ombudsman, or programs that are available to states. In addition, state programs seldom serve Native elders due to cultural and geographic barriers. Immediate action needs to be taken in order to remedy these disparities and ensure that Native elders are well taken care of.

In preparation for reauthorization of the Older Americans Act (OAA), the Administration on Aging (AoA) began an open process in 2010 to solicit input from throughout the country. More than 60 listening sessions were held and online input was received that represented the interests of thousands of consumers of OAA services. Input led to the creation of the targeted changes proposed by the Administration. The Administration has since provided information on program outcomes and the important role that the Act's services play in the lives of our elders.

Legislative Update

Reauthorization of the Older Americans Act. The current authorization of the Older Americans Act (OAA) of 1965 expired in 2011 and has since been due for reauthorization. In the last session of the 113th Congress, bills were introduced in both the House and the Senate to reauthorize the Older Americans Act through FY2018. Neither bills made it to the floor to be voted upon.

On January 20, 2015, Senator Alexander (R-TN) introduced the bipartisan *Older Americans Reauthorization Act of 2015*, S. 192. Among other important provisions, the bill puts in place strong protections against elder abuse by increasing existing abuse screenings and prevention efforts. It also preserves authorized funding levels through 2018. This legislation was signed into law and NCAI continues to ensure that it is implemented as intended in tribal communities.

Administrative Update

White House Conference on Aging. The White House Conference on Aging occurred on July 13, 2015 in light of the 50th anniversary of Medicare, Medicaid and the Older Americans Act and the 80th anniversary of Social Security. The White House Conference on Aging recognized the importance of these vital programs and encouraged increased support for caretakers, families and other stakeholders. The conference brought together a myriad of agencies, organizations and resources, with remarks from President Obama, to promote and advance the steps being taken to improve the quality of life as Americans age. The Administration also announced the launching of its new website designed to offer government-wide information about helping older Americans live fulfilling and independent lives. The new website can be accessed at: <http://www.hhs.gov/aging>.

Indian Health Service Consultation. On August 11, 2015, the Indian Health Service in conjunction with the Administration for Community Living/Administration of Aging, held a tribal consultation to hear from tribes on the Older Americans Act, the Indian Health Care Improvement Act Long-Term Services and Support provisions and disability issues in Indian Country.

For additional information please contact Denise Desiderio, Policy Director, ddesiderio@ncai.org.

NATIVE VETERANS

President Barack Obama recently stated that American Indian and Alaska Natives (AI/AN) have bravely fought to protect the legacy of native peoples through serving as members of the armed forces. He also stated that they have shown exceptional valor and heroism on battlefields from the American Revolution to Iraq and Afghanistan. Native American service members are younger as a cohort than all other service members, serve at a higher rate than other ethnic groups, and have a higher concentration of female service members. It is unfortunate that despite their distinguished service, AI/AN veterans have lower incomes, lower educational attainment, and higher employment than veterans of other races. They also are more likely to lack health insurance, and to have a disability, service-connected or otherwise, than veterans of other races. NCAI endeavors to protect the rights of all veterans while emphasizing the circumstances of AI/AN veterans which creates disparate treatment through access to resources and programs for healthcare, housing, and employment.

Legislative Update

Tribal Veterans Health Care Enhancement Act, S. 2417. S. 2417 was introduced by Senator Thune (R-SD) in December 2015. The legislation amends the Indian Health Care Improvement Act to require the IHS to cover the cost of copayment(s) for any American Indian or Alaska Native veteran that has been referred to or receives medical care or services from the Department of Veterans Affairs (VA), authorized under the Purchased/Referred Care program. The bill also requires the Director of the IHS and the Secretary of the VA to enter into an MOU for repayments, in consultation with tribes that will be impacted. The Director and Secretary are required to submit a report that describes 1) the number of veterans in each state who are IHS eligible and have received health care from the VA; and 2) the number of veterans in each state who are IHS eligible and were referred to a VA health care facility in each year from 2010-2015. The report is to be submitted to the Senate Committees on Indian Affairs and Veterans Affairs and House

Committees on Veterans Affairs and Natural Resources within 45 days of enactment.

S. 2417 passed out of the Senate Committee on Indian Affairs on June 8, 2016 and is now ready for consideration by the full Senate. To date, no companion legislation has been introduced in the House.

Expanding VA Nursing Home Grant Eligibility to Tribes. On March 13, 2015, Representative Ann Kirkpatrick (D-AZ) introduced H.R. 1127 to authorize the VA Secretary to make certain grants available to assist nursing homes for veterans located on tribal lands. The bill would amend the definition of “state homes” to include homes established by federal recognized Indian tribes for veterans who, by reason of disability, are incapable of earning a living. The bill would require the VA Secretary to pay those tribes for the hospital, nursing home, domiciliary, and medical care they provide to veterans in those homes. It also would make those tribes eligible for grants from the VA Secretary for the construction of state homes. The bill has been referred to the House Committee on Veterans’ Affairs – Subcommittee on Health. As of yet no hearing has been held on the bill.

Administrative Update

U.S. Department of Veterans Affairs Tribal Consultations. The Department of Veterans Affairs (VA) will hold two tribal consultation sessions in 2016 pursuant to its Tribal Consultation Policy and the current shift in how VA is delivering benefits and services to Veterans. The consultations are an opportunity to comment on the top 3 to 5 priorities that tribes have for serving Native Veterans, and may contribute to the development of an Indian Country Veterans Affairs policy agenda. The policy agenda would inform tribal governments, VA, Congressional Members, and other entities that serve Veterans in the coming years. The first of the two consultations will take place in conjunction with NCAI’s Mid Year Conference on June 29th in Spokane, Washington. The second consultation will occur later this year upon confirmation of a date and time from VA.

Tribal Veterans Service Officers in Indian Country – Parity with State and County Veterans Service Officers. The VA declined has not published a Proposed Rule to authorize Tribal Veteran Service Officers in Indian Country. VA Secretary McDonald spoke to the NCAI National Council Winter Session in March, 2016, expressing support for tribal sovereignty and stating there would be forthcoming changes to Sect. 14.628(d) to provide for Tribal Veterans Service Officers. What was published in the Federal Register in April, 2016 as a proposed Notice of Tribal Consultation was a series of conditions counter to tribal sovereignty and the trust relationship between the federally recognized tribes and the federal government.

The proposed regulations first provided for recognition through state organizations. While some tribes in some states may choose to have a working relationship with state organizations, this is not true of all tribe. Tribes have expressed that even if they have a working relationship with state organizations they would prefer independent certification directly to the Dept. of Veterans Affairs. Unfortunately in many instances, tribes are left to the vagaries of state politics and prejudices. The proposed requirements clearly indicate an intent to “shoehorn” tribal veterans service offices into the structure and requirements of voluntary membership entities such as the national VSOs, which are more in the nature of voluntary membership clubs, not governmental entities. Nor was the reality of tribal financing recognized by the proposals - such as required accounting of funds used to fund TVSO offices and the sources of those funds. Sovereign nations are not required to account for any funds except those originating with the federal government.

The proposed rule also demonstrates an intent to require the tribal organization to demonstrate "The urgency of this situation", in which VA apparently is reluctant to provide for certification of tribal VSOs prior to the November shutdown of the rulemaking entity from which a Rule for certification must come, which will be a profound change in the Appeals structure within the Veterans Benefits Administration. Within the framework of the changes, there will be little, if any, remaining opportunity for effective use of the appeals system by Indian veterans in tribal communities lacking certified representation. Native veterans are sometimes reluctant to trust the VA and may have no choice but to communicate with non-Indian representatives who have little or no understanding of the cultural aspects of their claims. The NCAI is working to ensure VA provides the opportunity to ensure that examinations, assessments and the preparation of a claim, and most importantly, the advocacy of the claim on the behalf of the Indian veteran, is accomplished in a culturally competent manner.

Deficient VA Tribal Consultation on HUD/VASH Program

The NCAI passed Resolution MSP-15-041 at the 2015 Mid-Year Conference last June requesting that the Housing and Urban Development/Veterans Affairs Supporting Housing (HUD/VASH) program delay implementing its Voucher Distribution Program as published in the Federal Register, until adequate consultation with tribal governments takes place. The HUD/VASH program combines Housing Choice Voucher rental assistance for homeless veterans with case management and clinical services provide by VA. VA provides these services for participating veterans at VA medical centers and community-based outreach clinics. Tribal officials stressed that federal officials failed to send a critical letter to tribes about submitting data bases about housing needs, per capita of veterans, homeless veterans and other information for distribution formula purposes was never sent.

Increase Technical Assistance for Homeowner Programs. Native Americans serve in the military at a higher rate per capita than any other minority population however their access to affordable homeownership financing has underperformed in the VA program delivery. In order to increase Native American Veteran homeownership the agency must: allocate adequate resources to administer the American Direct Loan (NADL) program in partnership with Native Community Development Finance Institutions; and, dedicate housing counseling resources to support the homebuyer readiness of Native American veterans.

Indian Health Service/Veterans Administration – Memorandum of Understanding. Native veterans have become a casualty of bureaucratic red tape between federal agencies. In 2010 the Indian Healthcare Improvement Act was permanently reauthorized as Title X under the Affordable Care Act. Included in Title X was a provision mandating the Department of Veterans Affairs to reimburse tribes, the IHS, and tribal organizations for services provided to veterans.

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VOTING RIGHTS AMENDMENT ACT

Native Americans were the last to obtain the right to vote in the United States, and Native voters continue to face persistent barriers in exercising that right. Some jurisdictions continue to implement schemes that impair the ability of Native people to fully participate in the electoral process. Native voters often live far from established polling places and voter registration sites in remote, isolated areas, with high rates of poverty, and in some areas, limited English proficiency. As a result, turnout in the 2012 elections among American Indians and Alaska Natives nationwide was 17 percentage points below that of other racial and ethnic groups.³

Section 5 of the Voting Rights Act was an important mechanism for protecting Native voters. Some areas with very large Native populations were covered under Section 5's preclearance procedures, which required the Department of Justice to approve changes in voting procedures before they were implemented by these jurisdictions. Since the Supreme Court's *Shelby County* decision, states and localities have pushed forward potentially discriminatory changes to voting including the elimination of in-person voting for the residents of more than a dozen Native villages in Alaska, many of whom are Native language speakers. Stricter voter ID laws, the moving and elimination of polling places, and diminished access to voter registration opportunities have further burdened Native Americans' right to vote since the *Shelby County* decision.

American Indian and Alaska Native stakeholders from across the country have identified five issues frequently encountered by Native voters that should be addressed by Congress:

- *Access to the Polls:* The most common and serious concern consistently raised by Native voters is distance to polling locations. Some Alaska Native Villages, for example, are assigned to polling places that are a 150-mile roundtrip and accessible only by plane or boat. Similarly, compared to other voters, many Native people have less access to early voting and voter registration opportunities.
- *Voter ID Laws:* For many Native people, their only identification document is issued by their tribe. However, state laws vary on whether these are acceptable forms of identification for voting. States should not be permitted to discriminate against tribal documents in their voter ID laws.
- *Voter intimidation:* Every election cycle there are reports of Native voters being harassed or intimidated at the polls. Tribal communities should have the ability to secure federal election monitors when they have reason to believe that harassment or discrimination may occur.
- *Language access:* Many Native voters, particularly elders, speak their indigenous language and require language assistance to vote. The Voting Rights Act provides that voting materials shall be provided in the language of the applicable language minority group as well as in the English language. However, some jurisdictions interpret the VRA to deny language assistance to Native voters even when a written form of the applicable Native language currently exists.
- *Voting Rights Consultation and Enforcement:* Because of isolation and a historic lack of access to legal services, there has been less litigation to enforce the Voting Rights Act in Indian Country than in other places. Litigation is very costly and time-consuming and Indian Country needs protections that do not rely on lawsuits brought by disenfranchised voters with few resources. The Department of Justice is well-positioned to use its resources to help ensure enforcement of the Voting Rights Act in Indian Country and should be required to consult with Indian tribes on a

government-to-government basis to gather information about voting issues experienced by Native voters.

Legislative Update

The Department of Justice held a consultation with American Indian/Alaska Native leaders in 2015 to discuss the possibility of proposing federal legislation addressing the obstacles facing Native voters. In May of 2015, the Department of Justice sent proposed legislation to Congress that would allow tribal governments to select sites for polling places on tribal lands in order to ensure equal access to polling places for Native voters.

NCAI has worked with Congress to develop legislation that addresses these issues. S. 1912, the Native American Voting Rights Act, was introduced by Senator Tester and focuses on improving access to voting for Native Americans. S. 1659/H.R. 2867, the bi-partisan Voting Rights Advancement Act, addresses voting rights for all Americans and includes several important provisions addressing issues in tribal communities. Neither of these pieces of legislation are expected to move before the end of this Congress.

For additional information please contact Julian Nava, Staff Attorney, jnava@ncai.org.

SELF-GOVERNANCE

Self-Governance enables tribes, as sovereign nations, to exercise their right to be self-governing and to take program funds and manage them in ways that best fit the needs of their citizens and tribal communities. It places the federal government's Indian Country programs firmly in the hands of the people who are served by them, enhancing and empowering tribal governments and their institutions, all while reducing the federal bureaucracy. As a tribally-driven initiative created through Congressional legislation, it allows tribal governments to negotiate annual appropriated funding and to assume management and control of programs, services, functions, and activities—or portions thereof—that were previously managed by the federal government.

As of 2015, there are 254 Self-Governance tribes within the Department of the Interior-Bureau of Indian Affairs (DOI-BIA) and 341 Self-Governance Tribes within the Department of Health and Human Services-Indian Health Service (DHHS-IHS). Over the past 35 years, the ISDEAA has been one of the most successful mechanisms empowering tribes to develop the capacity for government-building activities. Self-Governance tribal leadership and representatives have held ongoing meetings with the Administration and Congress for more than 25 years regarding ways to improve and advance tribal self-governance. Amending Title IV of the Indian Self-Determination and Education Assistance Act (ISDEAA) has been a top legislative priority for Self-Governance tribes for more than a decade. However, Title IV of the ISDEAA, the Self-Governance program within DOI, has serious gaps and problems. Therefore, leaders of Self-Governance tribes continue to advance the vision of the ISDEAA by working to amend Title IV of the ISDEAA to create consistency and administrative efficiency for Self-Governance tribes between Title IV Self-Governance in the DOI and Title V Self-Governance in the DHHS.

Legislative Update

S. 3234- Indian Community Economic Enhancement Act of 2016. On July 14, 2014 Senator John Barrasso (R-WY) introduced the Indian Community Economic Enhancement Act. The Senate Committee on Indian Affairs held a hearing on the bill and ordered it out of committee favorably on September 21st, 2016. S. 3234 orders the Secretary of the Interior to coordinate with the Treasury Department to develop initiatives

that promote investment education, identify investment barrier and ensure consultation with tribes regarding investments in Indian Country. The legislation also sets up an Indian Economic Development Fund within the Treasury

S. 286 – Department of the Interior Tribal Self-Governance Act of 2015. On January 28, 2015, Senators Barrasso (R-WY) and Tester (D-MT) the Chair and Vice-Chair of the Senate Committee on Indian Affairs (SCIA) introduced S. 286 – the Department of the Interior Tribal Self-Governance Act of 2015. S. 286. This legislation would amend Title IV of the Indian Self-Determination and Education Assistance Act to create consistency between self-governance programs in the Department of the Interior and the Department of Health and Human Services. This legislation has been introduced and considered in the past several Congresses and has wide-spread support among tribes.

In February of 2015, S. 286 was favorably reported out of Committee and passed the full Senate on July 7th, 2015. Since Senate passage the legislation has been stalled in the House of Representatives due to concerns related to the bill's purported impact on non-BIA programs. NCAI continues to work with the Self-Governance group to address concerns with the goal of passing the Senate version of the legislation in the House of Representatives.

NCAI will continue to support passage of S. 286 in this session of Congress.

For additional information please contact Denise Desiderio, Policy Director, d-desiderio@ncai.org.

TRIBAL INFRASTRUCTURE

NATIVE AMERICAN HOUSING

Housing has always been a priority for Indian tribes. Tribes are experiencing housing overcrowding and shortages, which has been a persistent challenge in tribal communities. Statistics illustrate the increasing need for housing in Indian Country. According to the U.S. Census Bureau 2006-2010 American Community Survey there are an approximate 142,000 housing units in Indian Country, and those homes frequently lack utilities and basic infrastructure. The survey shows that approximately 8.6% lack complete plumbing facilities, 7.5% lack kitchen facilities, and 18.9% lack telephone service. Close to 30% of Indian homes rely on wood for their source of heat. These staggering statistics represent longstanding challenges facing Indian tribes, and without sufficient funding investments and proper government-to-government consultation to address these challenges.

The Native American Housing and Self-Determination Act (NAHASDA), which authorizes Indian housing programs for tribes to develop, construct and maintain housing for members. Indian housing programs under NAHASDA have enabled tribes the self-determination capability to provide effective housing programs for tribal citizens. NAHASDA effectively replaced the various Indian housing programs under the 1937 Housing Act and consolidated federal housing funds through direct block grants to the tribes and their housing authorities. Tribes are now exercising their right of self-determination to design and implement their own housing and other community development infrastructure programs. NAHASDA has resulted in tens of thousands more housing units being constructed as well as increased tribal capacity to address related infrastructure and economic development challenges. Since the enactment of NAHASDA in 1996, tribal housing programs have been making great strides for housing and community development by using sustainable building practices and leveraging their NAHASDA and other federal funding. Currently there are approximately 500 Tribally Designated Housing Entities in Indian Country.

Legislative Update

Reauthorization of NAHASDA. The current authorization of the Native American Housing Assistance and Self-Determination Act of 1996 expired September 30, 2013. In the First Session of the 114th Congress, the U.S. House of Representatives passed *H.R. 360, Native American Housing Assistance and Self-Determination Act of 2015*, and was referred to the Senate. In June 2015, the Senate Committee on Indian Affairs approved *S. 710, Native American Housing Assistance and Self-Determination Reauthorization Act of 2015*, and is currently waiting for full Senate consideration. NCAI continues to urge Congress to reauthorize NAHASDA.

Administration Update

Indian Housing Block Grant Program Allocation Formula. For the past two years, the Negotiated Rulemaking Committee has been negotiating on a proposed rule for the allocation formula. In May, HUD published a proposed rule to revise the Indian Housing Block Grant (IHBG) Program allocation formula authorized by section 302 of NAHASDA and requested comments, 13 comments were submitted. The proposed regulatory changes are the result of consensus decisions reached by HUD and the tribal representatives who served on the Negotiated Rulemaking Committee on the current regulations regarding the IHBG Program formula. Committee recently met for the ninth time on September 20th and 21st in Oklahoma to review the comments received.

For additional information, please contact Gwen Salt, Policy Analyst, gsalt@ncai.org.

TRIBAL TRANSPORTATION

Surface transportation in Indian Country involves thousands of miles of roads, bridges, and highways. According to the latest National Tribal Transportation Facility Inventory (NTTFI), there are approximately 160,000 miles of roads and trails in Indian Country owned and maintained by tribes, the Bureau of Indian Affairs (BIA), states and counties. Of those, Indian tribes own and maintain 13,650 miles of roads and trails, of which only 1,000 (or 7.3 percent) are paved, with another 12,650 miles consisting of gravel, earth, or primitive materials. Of the 29,400 miles owned and maintained by the Bureau of Indian Affairs, 75 percent of them are graveled, earth, or primitive. When combined, the roads owned and maintained by Indian tribes and the BIA are among the most underdeveloped and unsafe road networks in the nation, even though they are the primary means of access to American Indian and Alaska Native communities by Native and non-Native residents and visitors alike.

In 2015, the Fixing America's Surface Transportation Act, or "FAST Act", was enacted into law. The FAST Act authorized several transportation programs for Indian tribal governments such as: the Tribal Transportation Program (TTP); Tribal Transit Program administered by the Federal Transit Administration; established a new tribal self-governance within the U.S. Department of Transportation; and addresses the safety for tribal transportation.

FAST Act authorized the following tribal specific provisions: Increased funding authorization for the Tribal Transportation Program at \$465 million for FY 2016; \$475 million for FY 2017; \$485 million for FY 2018; \$495 million for FY 2019; and \$505 million for FY 2020. It expands tribal self-governance throughout the U.S. Department of Transportation. The funding authorization for the Tribal Transit program was increased from \$30 million to \$35 million per year (with \$30 million for the formula component of the Tribal Transit Program and \$5 million for the discretionary competitive transit grant program. Provides a new grant program for "Nationally Significant" Federal lands and Tribal Transportation project, in which tribes are eligible to apply. In addition, it decreases the administrative cost of BIA and FHWA from 6% to 5%. FAST Act includes a Tribal Data Collection, which requires tribes who receive Tribal Transportation Program to report description of projects, current status of projects, and jobs created. One of many challenges facing tribes is the high vehicle accident and fatality rates, so the FAST Act stipulates: Tribal Safety Data which directs the Secretary of the DOT to report to Congress, after consulting with the Secretary of the Interior, the Secretary of DHHS, the Attorney General and Indian tribes, describing the quality of transportation safety data collected by States, counties, and tribes for transportation safety systems to improve the collection and sharing of data regarding crashes on Indian reservations; and requires the Secretary of DOT, after consultation with the Secretary of the Interior, the AG, States and Indian tribes, to provide a report to Congress within two years of enactment of the FAST Act that identifies and evaluates options to improve safety on public roads on Indian reservations.

Administrative Update

Tribal Transportation Self-Governance Negotiated Rule Committee The enactment of the FAST Act included the expansion of tribal self-governance throughout the U.S. Department of Transportation (DOT). In April, U.S. Department of Transportation published a notice seeking nomination to serve on the Tribal Transportation Self-Governance Negotiated Rule Committee. In July, DOT announced the membership of the Committee, 12 primary regional tribal representatives, five alternates, six other tribal representatives and seven federal representatives. The Committee held its first meeting in August, a second meeting in September, and a third on October 18-20, 2016. NCAI continues to monitor the activities of the Committee.

FAST Act. NCAI continues to monitor and provide updates to tribes regarding the implementation of the FAST Act by the Department of Transportation and Bureau of Indian Affairs.

Tribal Interior Budget Council BIA Road Maintenance Subcommittee. Although the majority of tribal transportation programs are authorized and funded through the Department of Transportation, the Bureau of Indian Affairs (BIA) Road Maintenance program within the Department of Interior is critical to BIA owned roads and facilities. The BIA is responsible for maintaining approximately 29,400 miles of roads in Indian Country including 900 bridges. However funding for the BIA Road Maintenance has remained stagnant at approximately \$24 million for several appropriations cycles, while deferred maintenance has risen to over \$289 million for FY 2015. The condition of these roads is increasingly concerning for tribal members and members of surrounding communities. The lack of sufficient infrastructure also hampers economic development opportunities for tribes. To assist in address this deferred maintenance of BIA Road Maintenance issue the Tribal Interior Budget Council (TBIC) has formed a BIA Road Maintenance Subcommittee, the Subcommittee held its first meeting in July 11th -12th in Rapid City, SD, and another meeting is schedule in November during TBIC's next meeting.

For additional information, please contact Gwen Salt, Policy Analyst, gsalt@ncai.org.

TRIBAL TELECOMMUNICATIONS

The U.S. continues to be a global leader in the technology and wireless industries. However, access to telecommunications infrastructure and services in rural and tribal lands continues to lag behind the nation overall. The Federal Communications Commission's (FCC) *2016 Broadband Progress Report* found that 41 percent of residents on tribal lands, with 68 percent of residents on rural tribal lands, lack access to high-speed Internet services. There are still significant barriers to tribal lands receiving this vital infrastructure and residents accessing it at affordable rates.

The primary law governing our telecommunications sector is the 1934 Communications Act, which was last amended in 1996 due to rapid advances in wireless and cable technologies. While the recognition of tribal sovereignty and requirements for tribal consultation were excluded from the original Act—and subsequent amendments in the 1996 Telecommunications Act—the Federal Communications Commission has exercised administrative flexibility to ensure tribal matters are addressed in its rulemakings. The 1996 amendments created six universal service principles to meet the goals of providing affordable and quality telecom services across the country.

To meet these mandated goals, the 1996 Telecommunications Act created the Universal Service Fund (USF) to provide financial subsidies and offset costs for the deployment of telecommunications services, especially in rural areas and for low-income individuals. The USF is comprised of four programs—the Connect America Fund (formerly the High Cost Program); the low-income (Lifeline/Link-Up) program; the Schools & Libraries (E-rate) program; and the Rural Health Care Program. The USF is not funded through the collection of taxes but instead through service fees collected from wireline and wireless phone companies and voice over Internet protocol (VoIP) providers. While the Federal Communications Commission regulates the telecom industry and manages the USF, the USDA Rural Utilities Service predominantly funds deployment of the nation's telecommunications infrastructure.

Legislative Update

Senate Committee on Indian Affairs Hearing on, “The GAO Report on, ‘Telecommunications: Additional Coordination and Performance Measurement Needed for High-Speed Internet Access Programs on Tribal Lands’”. On March 16, 2016 the Senate Committee on Indian Affairs held an oversight hearing on a Government Accountability Office (GAO) report released in February that affirmed several economic, geographic, and administrative barriers to broadband deployment and adoption on tribal lands. Twenty-one tribes, six Internet service providers, and five other groups—including NCAI—were interviewed for the report. Interviewed tribes noted the importance of high-speed Internet for economic development, education, and healthcare. However, despite the benefits of service a number of barriers including rugged and remote terrain, high poverty rates, and a lack of technical expertise were barriers to infrastructure deployment and broadband adoption on tribal lands. GAO noted other issues such as high costs—both for infrastructure deployment and service affordability for consumers on tribal lands—and low population densities on rural tribal lands as additional barriers to broadband availability. While the report noted that the 21 tribes interviewed all had some level of Internet service at varying speeds on their lands, there were documented limitations in 4G high-speed mobile broadband services. Furthermore, half of the interviewed tribes noted other Internet issues such as small data allocations, slow download speeds, and unreliable connections.

On May 11, 2016, NCAI submitted Testimony for the Record on the Oversight Hearing. Specifically, NCAI’s testimony referenced numerous issues with data collection, across multiple federal agencies, on broadband availability on tribal lands. Additionally, NCAI recommended that Congress should elevate the Federal Communications Commission, Office of Native Affairs and Policy as a stand-alone office with a permanent, dedicated annual budget; urge the FCC to adopt of a Tribal Broadband Factor in the High Cost Fund to support deployment to tribal lands; enact legislation to grant tribes the authority to designate their own library facilities to be eligible for E-rate funding; increase access to spectrum licenses for tribes; establish a stand-alone broadband fund; and establish a tribal seat on the Federal-State Joint Board on Universal Service. To view NCAI’s full testimony, please visit: <http://bit.ly/1V24JKF>.

Administrative Update

Federal Communications Commission announces guidelines for building new telecom infrastructure. On September 20, 2016, the Federal Communications Commission (FCC) announced new siting guidelines for building new towers and collocating antennas on existing structures. The guidelines announced will guide the FCC in determining fees requested by tribal nations in connection with the Section 106 National Historic Preservation Act review process. Federal law charges the FCC with determining whether a Tribal Nation has had a reasonable opportunity to participate if it declines to respond because a requested fee has not been paid. In addition to noting various environmental regulations, the guidelines reaffirmed the FCC’s current process that requires tribal consultation and notification.

Federal Communications Commission considers establishment of a Tribal Broadband Factor in the High Cost Fund. On March, 23, 2016 the FCC adopted a Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking to modernize Universal Service Fund, High Cost Fund disbursements for Rate-of-Return (RoR) carriers. Included among the proposed reforms to the High Cost Fund was a proposal advanced by the National Tribal Telecommunications Association (NTTA) to create a Tribal Broadband Factor within the High Cost Fund. This Tribal Broadband Factor was developed to provide reliable and ongoing funds for RoR carriers to purchase and maintain new equipment needed to build phone and Internet services on tribal lands. NTTA has been pushing for this proposal for the past two years after proposed, and adopted, RoR reforms threatened needed subsidies

for capital and operating expenses of the tribal telecommunications providers. The FCC's represcription not only threatened the financial operations and capabilities of the tribal telcos, but analyses showed that many non-tribal RoR carriers would see reductions in USF support for tribal lands they served.

On June 8, 2016, NCAI submitted Reply Comments in support of comments filed by NTTA, Gila River Telecommunications, Inc., and Sacred Wind Communications, Inc. requesting that the Commission adopt a Tribal Broadband Factor with tribal and non-tribal carriers having the option to voluntarily receive the increased funding if they meet certain build-out and certification requirements. This would ensure that Rate-of-Return telecommunications companies receiving High Cost funds through the Tribal Broadband Factor are held accountable for broadband Internet deployment and maintenance on tribal lands.

Additionally, NCAI also requested that the FCC waive or adjust limits on permitted operating expenses (opex) recoverable under the Tribal Broadband Factor—this would ensure that carriers have adequate opex funds to meaningfully engage with tribal governments to deploy services on tribal lands as well as working through multiple tribal and federal regulatory structures. To view NCAI's Reply Comments, please visit: <http://bit.ly/1XZGzaP>.

For additional information, please contact Maria Givens, Policy Analyst, mgivens@ncai.org.

APPROPRIATIONS

On September 29, the President signed H.R. 5325, Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act, which extends funding until December 9th. After the December 9th deadline, Congress must pass the remaining fiscal year (FY) 2017 spending bills or extend the Continuing Resolution (CR).

H.R. 5325 provides ongoing funding for federal agencies through December 9th at existing levels, with some adjustments. Adjustments include increased funding for the opioid epidemic and for Presidential transition costs as well as the inauguration of the next president. Additionally, the bill provides \$1.1 billion in supplemental funding for the Zika virus responses.

After the November elections, Congress is scheduled to be in session between Nov. 14 and Dec. 16. Leaders and the White House will have to determine how to wrap up the 11 remaining FY 2017 appropriations bills as well as attempt to merge the different spending bills drafted by the House and Senate committees. The House version of the Interior bill, for instance, would increase Bureau of Indian Affairs (BIA) by 2.6% and Indian Health Service (IHS) by 5.6% over the FY 2016 enacted level. The Senate version would increase BIA by 2.1% and IHS by 4%.

Bill	House			Senate			Conf.	President
	Subcom.	Comm.	Passage	Subcom.	Comm.	Passage		
Agriculture HR 5054 S 2956	13-Apr voice vote	19-Apr voice vote		17-May voice vote	19-May roll call 30-0			
CJS HR 5393 S 2837	18-May voice vote	24-May voice vote		19-Apr voice vote	21-Apr roll call 30-0			
Energy-Water HR 5055 S 2804	13-Apr voice vote	19-Apr voice Vote	26-May roll call 112-305	13-Apr voice vote	14-Apr roll call 30-0	12-May roll call 90-8		
Interior-Env. House draft S 3068	25-May voice vote	15-Jun roll call 31- 18	14-Jul roll call 231-196	14-Jun voice vote	16-Jun roll call 16-14			
Labor-HHS-Ed. House draft S 3040	July 7 voice vote	July 14 roll call 31-19		7-Jun voice vote	9-Jun roll call 29-1			
T-HUD HR 5394 S 2844	18-May voice vote	24-May voice vote		19-Apr voice vote	21-Apr roll call 30-0	19-May roll call 89-8		

CJS refers to the Commerce, Justice, Science appropriations bill.

Interior-Environment

The Senate appropriations committee and House have approved their respective versions of the Interior Appropriations bill. The House version provides a 2.6% increase over the FY 16 enacted level for Bureau of Indian Affairs/Bureau of Indian Education (BIA/BIE) and the Senate version would provide a 2.1% increase. The Indian Health Service (IHS) budget would receive a 5.6% increase over the FY 16 enacted level in the House bill and a 3.9% increase in the Senate version. The House Appropriations Committee approved its FY 2017 draft spending bill on June 15, 2016 and the Senate Appropriations committee approved its version on June 16. Once the versions of the Interior appropriations bills pass each chamber, the House and Senate must resolve the differences between their versions of the bill prior to sending it to the President.

	FY 2016 Enacted	FY 2017 Request	House Bill	House vs. Enacted	Senate Bill	Senate vs. Enacted
Total BIA and BIE	2,796,120	2,933,715	2,868,434	72,314	2,854,579	58,459
% Δ from FY16 Enacted		4.9%	2.6%		2.1%	
Total IHS	4,807,589	5,185,015	5,078,636	271,047	4,993,778	186,189
% Δ from FY16 Enacted		7.9%	5.6%		3.9%	

The increase for the BIA/BIE in the house version is the largest among the Department of Interior bureaus funded in the bill. The subcommittee reports the increases will be for schools, law enforcement, road maintenance, and economic development. The Senate version would provide \$2.85 billion for the BIA and BIE, an increase of \$58 million above the FY2016 enacted level. Increases would support public safety and justice, human services, and resource management programs.

The House bill includes a tribal recognition rider: “SEC. 125. None of the funds made available by this or any other Act may be used by the Secretary of the Interior to implement, administer, or enforce the final rule entitled “Federal Acknowledgment of American Indian Tribes” published by the Department of the Interior in the Federal Register on July 1, 2015 (80 Fed. Reg. 37862 et seq.).”

Road Maintenance would receive a \$3.2 million increase above the budget request for a total of \$30 million in the House bill. The House Committee Report recognized that only 16 percent of BIA-owned roads and only 67 percent of BIA-owned bridges are in fair condition or better. The House report noted concerns about the BIA’s substantial road maintenance backlog. The Senate version would provide an increase of \$3.6 million for road maintenance. The Senate committee report noted concern about the future funding of the Road Maintenance account and the backlog for deferred maintenance of roads in Indian Country.

The House version does not include the requested increases for the Nativeonestop.gov web portal citing the limited funding for core tribal government programs. The House Committee report encourages Indian Affairs to coordinate with the Grants.gov web portal, to share costs with other Federal agencies, and to reconsider the need to hire regional staff, before including the proposal in the fiscal year 2018 budget request.

Tiwahe: Both the House and Senate would provide increases for Social Services, Indian Child Welfare Act funding, and the Housing Improvement Program. The Senate draft bill includes \$159,161,000 for human services programs, an increase of \$12,157,000 above the enacted level. Program increases include \$7,164,000 for Social Services, \$3,305,000 for the Indian Child Welfare Act, and \$1,687,000 for the Housing Program in order to expand and continue the Tiwahe initiative. The Senate committee report recommends increasing funds for Tiwahe as a way to strengthen tribal communities in Indian country by leveraging programs and resources; the committee report however called for measuring program effectiveness as the initiative continues to grow. The Committee directs the Bureau to report back in 90 days of enactment of this act on the performance measures being used to monitor and track the initiative's effectiveness in Indian country.

Public Safety and Justice: The Senate draft bill does not accept the proposed \$8,206,000 decrease for tribal justice support and restores this amount to ensure \$10,000,000 remains available to address the needs of Public Law 83–280 States. The Senate Committee Report noted concerns about the “tribal courts needs as identified in the Indian Law and Order Commission’s November 2013 report which notes Federal investment in tribal justice for Public Law 83–280 States has been more limited than elsewhere in Indian Country.” The Senate report directs BIA to work with Indian tribes to consider options that promote, sustain, design, or pilot tribal court systems for tribal communities subject to full or partial State jurisdiction under Public Law 83–280. This would include consultations with tribes on how this funding may result in a strategic plan identifying the funding and technical infrastructure needs for these States.

Indian Health Service

The Indian Health Service would be funded at \$5.1 billion, an increase of \$271 million above the FY 2016 enacted level. The IHS funding increase is the largest increase bill-wide. The increases include operating costs for staffing at new facilities, and increases for growth in contract support costs, medical inflation, and the aging population.

The Senate version would provide \$4.99 billion for the IHS, an increase of \$186 million above the FY2016 enacted level. Additional funds are focused on suicide prevention, domestic violence prevention, and alcohol and substance abuse problems. Funds are also included for infrastructure improvements to health care facilities.

	FY 2016 Enacted	FY 2017 Request	House Bill	House vs. Enacted	Senate Bill	Senate vs. Enacted
Total IHS	4,807,589	5,185,015	5,078,636	271,047	4,993,778	186,189
% Δ from FY16 Enacted		7.9%	5.6%		3.9%	

The House Committee report directs the Government Accountability Office to report on the use of advance appropriations authority for healthcare programs across the Federal government, including problems encountered, any estimates of cost savings, and applications to the Indian Health Service.

The Senate bill fully funds the programmatic budget request for high priority programs designed to address some of the most difficult issues facing Indian Country such as suicide and alcohol and substance abuse. Increases above the enacted level in the services account include \$4 million for the

Domestic Violence Prevention Program and \$16.8 million for the alcohol and substance abuse program to focus on tribal youth and incorporate more holistic healthcare models. The Senate version would fully fund the programmatic request for mental health programs of \$25 million, which includes \$3.6 million for the Zero Suicide Initiative and \$21.4 million for the Behavioral Health Integration Initiative.

Transportation HUD

The House version would provide \$655 million for Native American Housing Block Grants, which is \$5 million above the FY 2016 enacted level and \$45 million below the budget request.

(in thousands of dollars)	FY 2016 Enacted	FY 2017 Request	House Bill	House vs. Enacted	Senate Bill	Senate vs. Enacted
Native American Housing Block Grants	650,000	700,000	655,000	5,000	648,500	-1,500
Native Hawaiian Block Grant	----	500	---	-500	5,000	4,500
Indian Housing Loan Guarantee	7,500	5,500	5,500	-2,000	6,500	1,000
Indian CDBG	60,000	80,000	60,000	--	60,000	--

The House bill also provides \$3,500,000 for organizations representing Native American housing interests to provide training and technical assistance to Indian housing authorities and TDHEs. Of this amount, no less than \$2,000,000 is for a national organization as authorized under NAHASDA. Bill language is included in the House draft to reduce formula allocation funding from any grantee that has an unexpended balance greater than three times its formula allocation, unless that grantee's formula allocation is less than \$8,000,000. The Senate version includes \$5,500,000 for technical assistance needs in Indian country to support both the IHBG and ICDBG programs. The Committee directs that these technical assistance funds be administered by Public and Indian Housing and not be merged with the broader Community Compass initiative administered by the Office of Policy Development and Research.

Vouchers for homeless Native American veterans: The House version recommends \$7,000,000 for renewal of vouchers for Native American veterans who are homeless or at risk of homelessness living on or near a reservation, or other Indian areas. Because of the unique nature of the program, a separate renewal line is required for this program, which was first funded in FY 2015. The Senate recommendation includes \$7,000,000 for rental assistance and associated administrative costs for Tribal HUD-VASH to serve Native American veterans that are homeless or at-risk of homelessness living on or near a reservation or other Indian areas.

Commerce, Justice, Science

The Senate Commerce, Justice, Science and Related Agencies (CJS) FY 2017 Appropriations Bill, S. 2387, passed the full Senate Appropriations Committee on April 21, 2016, and provides more than \$355 million in funding for tribal justice programs for FY 2017—more than \$200 million increase from FY 2016, including a 7% tribal allocation from all discretionary Department of Justice (DOJ) Office of Justice Programs (OJP), a 5% tribal allocation from the Crime Victims Fund, and retains the rest of Indian Country programs (VAWA, COPS etc).

Funding in the bill includes: \$145 million for Indian tribes through a 5% set-aside from the Crime Victim's Fund for providing services to crime victims; \$114 million for Indian tribes through a 7% set-aside from across the Office of Justice Programs that can be used to develop the capacity of tribal criminal justice systems; \$30 million for tribal programs at the Community Oriented Policing Services (COPS) office; \$10 million for the Tribal Youth Program; an estimated \$39 million for the Office on Violence Against Women's (OVW) Grants to Tribal Governments Program through set-asides from other OVW programs; an estimated \$6.5 million for OVW's Tribal Coalitions Program through set-asides from OVW programs; an estimated \$3.5 million for OVW's Tribal Sexual Assault Services Program; \$4 million for implementation of Special Domestic Violence Criminal Jurisdiction; \$1 million for research on violence against Native women; \$500,000 for the National Indian Country Clearinghouse on Sexual Assault

The House CJS FY 2017 Appropriations Bill passed the full House Appropriations Committee on May 24, 2016, and includes a 5% tribal set-aside in the VOCA Fund, but does not include the 7% set-aside from OJP for tribal criminal justice systems. The House includes \$65,000,000 for OJP tribal grant programs, an increase of \$35,000,000 above the enacted level. The House Committee report directs OJP to continue to consult closely with tribes to determine how tribal assistance funds will be allocated among grant programs that improve public safety in tribal communities.

Energy and Water

Office of Indian Energy Policy and Programs: The House bill recommends \$21,330,000, to coordinate and implement energy management, conservation, education, and delivery systems for Native Americans. Within this amount, \$18,130,000 is included for the Tribal Energy Program and \$3,200,000 for Program Direction. The House version includes funding for the Department's request in this account rather than in a new account, as requested. The Senate version recommends \$20,000,000 for the Office of Indian Energy. The activities of this office have previously been funded through the Department of Administration appropriation. The Committee notes that the Department did not repeat its request to initiate a Tribal Indian Energy Loan Guarantee Program for fiscal year 2017. Within available funds, the Senate Committee Report encourages the Office of Indian Energy to facilitate the utilization of existing loan programs by tribal governments, including the title 17 Innovative Technology Loan Guarantee Program and the Transmission Infrastructure Program.

Labor, HHS, Education

	FY 2016 Enacted	FY 2017 Request	Senate Bill	S. Bill vs. Enacted	S. Bill vs. Request
DOL Native American Programs	50,000	52,000	48,500	-1,500	-3,500
ACF Admin. for Native Americans	50,000	53,100	50,000		-3,100
Administration for Community Living					
Native American Caregivers Support	7,531	7,531	7,531		
Grants for Native Americans	31,158	31,158	26,158	-5,000	-5,000
Higher Education					
Strengthening NA-Serving Nontribal Inst	3,348	3,348	3,348		
Strengthening Tribal Colleges	27,599	27,599	27,599		
Strengthening AN and NH-Serving Inst	13,802	13,802	13,802		
INDIAN EDUCATION					
Grants to Local Educational Agencies	100,381	100,381	100,381		
Federal Programs					
Special Programs for Indian Children	37,993	67,993	37,993		-30,000
National Activities	5,565	6,565	5,565		-1,000
Subtotal, Federal Programs	43,558	74,558	43,558		-31,000
Total, Indian Education	143,939	174,939	143,939		-31,000
Substance Abuse and Mental Health Services Administration					
Mental Health Appropriation					
AI/AN Suicide Prevention Initiative	2,931	2,931	2,931		
Tribal Behavioral Grants	15,000	15,000	15,000		
Substance Abuse Prevention Appropriation					
Tribal Behavioral Health Grants	15,000	15,000	15,000		

The Senate version of the Labor, HHS, Education spending bill, S. 3040, did not include many of the requested increases from the President's budget.

Within the Administration for Native Americans, the Senate recommendation includes \$12 million for Native American language preservation activities, including no less than \$4 million for Native American

language nests and survival schools, as authorized by sections 803C(b)(7)(A)-(B) of the Native American Programs Act.

Indian Education: the Senate bill recommends \$143,939,000 for Indian education programs. The Senate bill does not provide the \$30 million increase from the President's budget for an expansion of the Native Youth Community Projects (NYCP) under the Special Programs for Indian Children.

Tribal Behavioral Health Grants: The Senate bill fully funds the President's requested level for tribal behavioral health grants.

COMMERCE, JUSTICE, SCIENCE AND APPROPRIATIONS BILL

The Senate version includes higher levels for many tribal programs compared to the House version. NCAI urges passage of the 7% tribal set-aside of Office of Justice Program (OJP) funding.

State and Local Law Enforcement Assistance: The Senate version recommends funding tribal grant programs by permitting 7% of OJP discretionary grant and reimbursement program funds to be used for tribal criminal justice assistance. The Senate Committee directs OJP to consult with tribal stakeholders in how tribal assistance will be awarded for detention facilities, courts, alcohol and substance abuse programs, civil and criminal legal assistance, and other priorities. The Senate bill includes \$10 million for the Tribal Youth Program, while the House bill does not. The House bill does not include the 7% tribal allocation across OJP discretionary funds, but instead would appropriate \$30 million under COPS for tribal assistance at OJP.

Office of Justice Programs (OJP), Crime Victims Fund (CVF): Both the House and Senate would substantially increase disbursements from the CVF. The Senate directs \$52 million of the CVF to tribal governments. The House does not include a direct allocation for tribal governments, but does include report language directing the Department of Justice to consult with Indian tribes on the distribution of the CVF funds.

LABOR- HEALTH AND HUMAN SERVICES (HHS) EDUCATION

Status: Versions approved by the Appropriations Committees of both the House and Senate

Major Differences: The House version includes \$143.9 for Indian Education. The Grants to Local Educational Agencies FY16 amount would be the same as FY 15, but the Special Programs for Indian Children would see an increase of \$20 million above the FY 2015 enacted level and \$30 million below the budget request.

The House version includes an overall total of \$32.9 million for the expansion of suicide prevention, overall mental health and substance abuse prevention activities for Native American youth. The Senate version does not include the increases proposed in the President's budget for Tribal Behavioral Health grants.

The House bill includes a policy provision prohibiting the National Labor Relations Board (NLRB) from exercising jurisdiction over Indian tribes. The Senate committee report includes language expressing concern that the NLRB has sought in some cases to exercise jurisdiction over Indian-owned businesses within tribal territories.

TRANSPORTATION HUD APPROPRIATIONS BILL

The House passed the Transportation-HUD spending bill, HR 2577, on June 9, 2015. The bill passed 216-210, and is the fifth spending bill to pass the House. The bill adheres to the Budget Control Act spending caps imposed by PL 112-25. The Office of Management and Budget warned that the president would veto the bill because the funding is too low and because of policy riders.

Native American Housing Block Grants

Dollars in millions	FY15 Enacted	FY16 PB	House	House vs. FY15	House vs. PB
NAHBG	650	660	650	0	10

The House Committee recommends \$650 million for Native American Housing Block Grants, the same as the FY 2015 enacted level and \$10 million below the budget request. \$3.5 million is for organizations representing Native American housing interests to provide training and technical assistance to Indian housing authorities and Tribal Designated Housing Entities (TDHEs), with no less than \$2 million for a national organization as authorized under NAHASDA. \$2 million for Title VI loan would guarantee up to \$17.45 million. The House bill continues language requiring FY 2016 funds to be spent within 10 years. Bill language is included to withhold reduced formula allocation funding from any grantee that has an unexpended balance greater than three times its formula allocation, unless that grantee's formula allocation is less than \$5,000,000.

Indian Housing Loan Guarantee Fund Program Account

(Dollars in millions)	FY2015 Enacted	FY16 Pres. Bud.	House	Bill vs. FY2015	Bill vs. FY2016 PB
Credit Subsidy	7	8	8	1	---
Limit on guaranteed loans	744	1,269.8	1,269.8	525.8	---

Section 184 of the Housing and Community Development Act of 1992 establishes a loan guarantee program for Native American individuals and housing authorities to build new housing or purchase existing housing on trust land. This program provides access to private financing that otherwise might be unavailable because of the unique legal status of Indian trust land. The House bill includes \$8 million in new credit subsidy for the Section 184 loan guarantee program, which is \$1 million above the FY 2015 enacted level and the same as the budget request. This will guarantee a loan volume of \$1,269,841,000, which is \$525,794,000 above the FY 2015 enacted level and the same as the budget request.

Indian Community Development Block Grant

The house bill includes \$60 million for the Indian Community Development Block Grant, which is \$6,000,000 below FY 2015 enacted and \$20,000,000 below the budget request. No funding is provided for the teacher housing set-aside requested in the budget.

For additional information please contact Amber Ebarb, Budget/Policy Analyst and PRC Program Manager aebarb@ncai.org.

OAS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

On June 16, after 19 rounds of negotiations and 27 years of work, the Organization of American States (OAS) adopted the American Declaration on the Rights of Indigenous Peoples. The OAS is a regional intergovernmental organization comprised of all 35 countries of the Americas. The American Declaration is significant because the OAS houses two unique bodies – the Inter-American Court on Human Rights and the Inter-American Commission on Human Rights, which have a strong body of jurisprudence on indigenous peoples' rights in the Americas. These bodies will apply and implement the American Declaration in their work. Indigenous peoples can now use the American Declaration to assert and defend their rights in the Americas.

The American Declaration protects many of the same rights as those enshrined in the UN Declaration on the Rights of Indigenous Peoples. In some areas, the American Declaration goes further and includes more specificity than the UN Declaration.

FOLLOW-UP to the 2014 WORLD CONFERENCE ON INDIGENOUS PEOPLES

On September 22-23, 2014, the United Nations (UN) hosted the World Conference on Indigenous Peoples (WCIP). The WCIP included over 1,000 indigenous representatives from all over the world, as well as all 193 UN member countries. The purpose of the WCIP was for members of the UN and indigenous peoples to discuss implementation of the Declaration on the Rights of Indigenous Peoples.

Leading up to the World Conference, NCAI joined with a large group of American Indian and Alaska Native tribes, inter-tribal associations, and non-profit organizations to advocate for four priorities at the World Conference. These priorities were:

1. establishing an appropriate status for Indigenous governments at the UN;
2. creating a UN mechanism to monitor and promote implementation of the Declaration;
3. adopting measures to prevent violence against Indigenous women and children; and
4. protecting sacred places and objects.

During the opening session of the WCIP, the UN General Assembly adopted an Outcome Document that provides for concrete and action-oriented measures to implement and achieve the objectives of the United Nations Declaration on the Rights of Indigenous Peoples. While we did not get everything we were asking for, the Outcome Document does address all 4 of our priorities in one form or another. It is crucial that we maintain this momentum to make sure that the decisions of the World Conference are fully implemented, and begin to realize the promise of the UN Declaration on the Rights of Indigenous Peoples.

Over the past two years, there has been a great deal of follow-up work to the WCIP and NCAI, in partnership with the Native American Rights Fund, has been fully engaged in continuing to advocate with various UN bodies for meaningful action on our four priorities. We anticipate further engagement on our four priorities as follows.

Creating an Implementing and Monitoring Body for the UN Declaration

The UN Human Rights Council adopted a resolution at its Sept. 2016 session that will reform the mandate of the Expert Mechanism on the Rights of Indigenous Peoples to give it greater capacity,

autonomy, and resources to press for implementation of the UNDRIP. The reformed mandate will significantly change the way that EMRIP will function. Its main tasks will be to assist states to meet the standards of the UNDRIP, facilitate dialogue between states and Indigenous Peoples, take in information about violations of indigenous rights, and provide technical advice to states and Indigenous Peoples. The membership of the EMRIP will be expanded from 5 to 7 persons to make it a more representative body and the annual meeting time will be expanded with an additional 5 working days. These changes are expected to take effect within the next year.

Enabling Indigenous Governments to take their Rightful Place in the UN

On December 23, 2015, the UN General Assembly adopted the report and resolution of its Third Committee regarding the rights of indigenous peoples. In the resolution, the General Assembly requested that the President of the 70th Session of the General Assembly to convene consultations in 2016 on the issue of indigenous government participation in the UN, with a final decision on the matter to be made during the General Assembly's 71st Session, which begins in September, 2016. The President of the General Assembly appointed four advisors, two from member states and two representing Indigenous peoples, to assist him with the consultation process. In May, the Office of the President of the UN General Assembly conducted two consultations in New York with member states and indigenous peoples on how to enable the participation of indigenous peoples' representatives and institutions (governments) at the United Nations. Additional consultations took place in June. Following the consultations, the four Advisors prepared a compilation text taking into account all of the views presented. The Advisors also prepared an addendum with recommendations for further discussion. The compilation text and addendum were presented to the member states and indigenous peoples at the EMRIP session in July.

When the 71st Session of the General Assembly began in September 2016, the new President of the UN General Assembly reappointed the four Advisors to continue their work with the goal of developing a resolution that establishes the process for enhanced participation by indigenous governing institutions during the 71st session of the General Assembly, which ends in September 2017. A meeting of indigenous representatives and the four Advisors is scheduled to take place Nov. 11-12 in Bangkok, Thailand. Consultations with member states and indigenous peoples will take place December 14-15 in New York. Additional consultations are expected to take place the week of January 30, again in early March, and at the UN Permanent Forum on Indigenous Issues in 2017. NCAI will continue to advocate for an appropriate mechanism for tribal governments to participate at the United Nations.

Ending Violence Against Indigenous Women

During its June 2016 session, the UN Human Rights Council held a full-day panel discussion on women's rights; considered the reports of the Special Rapporteur on violence against women and of the Working Group on the issue of discrimination against women in law and in practice on its country visit to the United States; and adopted the annual resolutions on violence against women (with a focus on indigenous women) and discrimination against women. On June 16, the Council held a panel to examine the issue of violence against indigenous women and girls and its root causes. A panel on violence against Indigenous women also took place at the Human Rights Council session in September 2017.

In June of 2016, President Obama met with the President of Mexico and the Canadian Prime Minister at the North American Leaders Summit to discuss a variety of topics impacting our shared borders. The three countries announced a tri-lateral commitment to address the high levels of violence against indigenous women and girls that exists across North America and formed a new North American

Working Group on Violence Against Indigenous Women and Girls, which will meet for the first time in October in Washington, D.C. The goals of the Working Group include:

- Exchanging knowledge of comprehensive policies, programs and best practices to prevent and respond to violence against indigenous women and girls through increased access to justice and health services, with a human rights and multicultural approach;
- Enhancing cooperation to address violent crimes against indigenous women and girls, including human trafficking, residing on or off their tribal, First Nations, and indigenous lands and across our borders;
- Improving the response of our justice, health, education, and child welfare systems to violence against indigenous women and girls; and
- Strengthening the capacity of our health systems to provide culturally-responsive victim services.

The White House and DOJ held listening sessions with tribal stakeholders in September to solicit input about priorities and actions for the Working Group. An update on the October meeting will be provided to tribal stakeholders and further input will be solicited at DOJ's annual consultation on violence against women, which will take place on December 6 on the Agua Caliente reservation in Palm Springs, CA.

For additional information please contact Virginia Davis, Senior Policy Advisor, vdavis@ncai.org.

WHITE HOUSE INITIATIVES

YOUTH - GENERATION INDIGENOUS

President Obama has launched Generation Indigenous (Gen-I), a youth initiative focused on removing the barriers that stand between Native youth and their opportunity to succeed. The Gen-I initiative is intended to take a comprehensive, culturally appropriate approach to help improve the lives of Native youth by creating policies and programs that will help Native youth succeed.

As part of this initiative, the White House released its Native Youth Report at the White House Tribal Nations Conference in December of 2014. This report acknowledges past failures of federal policy on the education of Native students, and recognizes the challenges facing Native youth. In order to address these challenges Native youth were asked to accept the Generation Indigenous Challenge. This initiative asked native youth to create community service projects that directly impacted an issue within their own community. In July of 2015, 1,200 Native Youth that accepted the challenge and were invited to attend the first ever White House Tribal Youth Gathering. Since the gathering the initiative has invited several youth to participate in tribal leader discussions.

In addition, the Administration has launched the Cabinet Native Youth Listening Tour so that Cabinet officials can hear directly from Native youth on how effective federal policies can improve youth outcomes. To date, several Cabinet members have visited Native youth in tribal communities including Secretary of the Interior Sally Jewell, Office of Personnel Management Director Katherine Archuleta, Environmental Protection Agency Administrator Gina McCarthy, and Secretary Tom Perez. The Administration is also focused on expanding federal outreach on youth internships and employment opportunities across federal agencies.

More recently on September 24th, President Obama invited 100 Native youth to the White House Tribal Nations Conference to join tribal leaders and members of the administration to discuss critical issues affecting Indian Country. At the conference youth had the opportunity to voice their concerns in breakout sessions as well as a panel specifically designed for Native Youth to share their concerns and highlight their accomplishments. Generation Indigenous placed Native Youth as a high priority within this administration.

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WHITE HOUSE COUNCIL ON NATIVE AMERICAN AFFAIRS

President Obama established the White House Council on Native American Affairs by Executive Order on June 26, 2013, and the inaugural meeting was held on July 29, 2013. The Council, which includes more than 30 federal departments and agencies, coordinates the Administration's engagement with tribal governments and works across executive departments, agencies and offices to develop policy recommendations and expand efforts to leverage federal programs and resources available to tribal communities.

The Executive Order establishing the Council also institutionalized the White House Tribal Nations Conference as an annual event. The White House Conference brings together tribal leaders from all federally recognized tribes with Cabinet members and senior Administration officials. This year's White House Conference was the eighth and final conference of the Obama Administration.

The Council has continued to prioritize its focus on issues such as: reform of Indian Education, promoting sustainable tribal economic development; and supporting sustainable management of Native lands, environments and natural resources. At the September meeting of the Council, a new subgroup focusing on justice and public safety was announced. This subgroup will focus on the unique legal and jurisdictional issues faced by Tribal governments.

The September meeting of the White House Council on Native American Affairs was also the first meeting to incorporate tribal leader attendance and input into the Council. NCAI President Brian Cladoosby attended the meeting and provided a tribal perspective on the important issues facing Indian Country. The Council committed to including tribal participation at future meetings of the Council and within the subgroups.

In the coming months, NCAI will focus its efforts on ensuring the next Administration recognizes the importance of the Council in ensuring that federal agencies work collaboratively to address issues of importance to tribal communities.

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