



Tribal Impact Days

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Welcome to Impact Days

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National Congress of American Indians



LAND IN TRUST

KEY POINTS:

- Pass legislation that reaffirms the Secretary's authority to take lands into trust for all tribes and affirms the trust status of lands already in trust.

BACKGROUND:

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.

With over 15 federal lawsuits currently pending, the *Carcieri* decision has 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.

Following the Supreme Court's decision in *Carcieri v. Salazar* in 2009, tribes have been calling on Congress to amend the Indian Reorganization Act to reaffirm the Secretary of the Interior's authority to take lands into trust for all tribes; and affirm the status of current lands held in trust for tribes and to ensure that all tribes are treated equally under the Indian Reorganization Act.

LEGISLATION:

In July, Senator Barrasso introduced S. 1879, the Interior Improve 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 incentivizes agreements between tribes and counties that take into account mitigation factors of lands taken in trust. The legislation makes the land-in-trust process more transparent by placing applications on the DOI website 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 complements other legislation that has been introduced to address concerns raised by tribes since the 2009 Supreme Court decision in *Carcieri v. Salazar*. 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 in accordance with the Indian Reorganization Act, 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.

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TRIBAL LABOR SOVEREIGNTY ACT

KEY POINTS:

- Support H.R. 511 & S. 248 – the Tribal Labor Sovereignty Act.
- Ensure that Tribal governments are tribal governments are treated as other governments for purposes of the National Labor Relations Act.

BACKGROUND:

The NLRA was enacted in 1935 to address growing upheavals in private industry. The Act was never designed to regulate government employment, because governments owe their first duty to their citizens. Governments were therefore expressly exempted from the Act. Although the NLRA did not specifically list out each and every type of exempted government, the Board understood Congress's plain intent and consistently interpreted the government exemption to include tribal governments. But in 2004 the NLRB did an about-face and, without either consulting tribes or writing new regulations, the Board 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, rather than to cover them. Overnight, tribal governments became the only governments out of 90,000 state and local governments to be covered by the NLRA.

Congress's wisdom in exempting governments from the Act is plain. Applying a private sector labor regime of forced collective bargaining over all conditions of employment, under the threat of protected strikes, is a formula for bringing government to its knees. A government would have to choose between surrendering its very right to enact laws, or permit government itself be shut down by work stoppages. This is particularly problematic for tribal governments, whose fragile economic activities are as critical to their success as governments and the resulting 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. Our police and fire departments, our schools and hospitals, our courts, and our tribal legislatures must stay open. And to do so depends upon uninterrupted revenue-generating activities operated by tribal government employees. The Tribes' exemption from the NLRA is crucial to their very existence as sovereign tribal governments.

The Tribal Labor Sovereignty Act builds upon a principle that has been amply proven by Indian tribes across the country: when tribal sovereignty is respected and acknowledged, successful governments follow. The legislation will address the NLRB's unnecessary and severely damaging overreach into the sovereign jurisdiction of tribal governments. By amending the NLRA to expressly treat tribal government employers the same as state and local government employers, the law will provide needed certainty to ensure that tribal ordinances relating to labor practices will be respected, while also assuring parity across all the Nation's governments.

LEGISLATION:

Tribal leaders from across America urge support for the Tribal Labor Sovereignty Act pending before Congress, H.R. 511 & S. 248. Both the Senate and House bills have been successfully reported out of committee in both the Senate and the House, and we anticipate floor votes in the near future. This proposed legislation is an integral part of Congress's efforts to ensure that the United States continues to respect the sovereignty of tribal governments. It does so by explicitly adding "tribes" to the definition of governmental entities that are exempt from the National Labor Relations Act.

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PROVIDING SERVICES & JUSTICE TO NATIVE VICTIMS OF CRIME

KEY POINTS:

- Last year Congress disbursed \$2.3 billion, the highest amount ever, from the Crime Victims Fund (CVF), which is the nation's primary funding source for crime victim services programs and compensation.
- Indian tribes, however, continue to be largely left out of the programs funded by the CVF, even though tribal communities experience the highest crime victimization rates in the country.
- Congress must take action to ensure crime victims in tribal communities are not left out of the life-saving services funded by the CVF again this year and in the future.
 - Support the language in the Senate CJS bill that would direct \$52 million from the CVF to tribal communities this year.
 - Support the SURVIVE Act, S. 1704, which would create a stable 5% allocation of CVF disbursements for a grant program for tribal governments to provide crime victim services for the next 10 years.

BACKGROUND:

American Indian and Alaska Natives experience the highest crime victimization rates in the country.

- Native people are 2.5 times more likely to experience violent crime than other Americans.
- Approximately 34% of American Indian and Alaska Native women are raped and 61% are assaulted in their lifetimes.
- Due to exposure to violence, rates of post-traumatic stress disorder among Native children match rates among Iraq and Afghanistan war veterans.

Despite the devastating impact of criminal victimization in tribal communities, Indian tribes have largely been left out of the Crime Victims Fund, which is the federal government's principle means of providing resources for crime victims.

Congress created the CVF in 1984 based on the idea that money that 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 over \$13 billion. There has been significant pressure on Congress to make more of this money available for crime victims, and Congress significantly increased the distributions for FY 2015 to \$2.3 billion. Distributions are expected to be similarly high in FY 2016. The House CJS bill sets the level at \$2.7 billion, while the Senate CJS bill sets it at \$2.6 billion.

Unlike state and territorial governments, who receive an annual formula distribution from the CVF, Indian tribes are only able to access CVF funds via pass-through grants from the states or by competing for very limited resources administered by the Department of Justice. According to DOJ, from 2010–2014, state governments passed through 0.5% of available funds to programs serving tribal victims—less than \$2.5 million annually nationwide. This leaves a significant unmet need in most tribal communities. In 2013—the year with the highest number of state subgrants to date—more than 60% of states with Indian tribes did not make any subgrants. Of the 16 states that did pass through money to tribal victim service programs, all but one passed through less than 5% of the states’ available VOCA funds.

In July of this year, the Senate Committee on Indian Affairs unanimously approved S. 1704, the Securing Urgent Resources Vital to Indian Victim Empowerment Act, or “SURVIVE Act.” The bill would create a new grant program at the Bureau of Indian Affairs for crime victims services. Funding for the program would come from a 5% allocation from the CVF for the next 10 years.¹ The SURVIVE Act is unlikely to pass in time to make a difference for FY 2016 funding. Senate appropriators, however, have included language in the Senate CJS appropriations bill that would direct \$52 million from the CVF to tribal governments. The House CJS bill did not include an allocation for tribal governments, and NCAI has asked appropriators to adopt the Senate language in conference. We encourage Members of Congress to support efforts to include Indian tribes in the CVF through authorizing language like the SURVIVE Act and to support appropriations language that ensures tribal victims are not left behind again this year.

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

¹ NCAI has sent a letter to Senators Barrasso and Tester requesting that the new program be made permanent rather than expiring after 10 years.

TRIBAL SELF-GOVERNANCE: AMEND TITLE IV OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

KEY POINTS:

- The Indian Self-Determination and Education Assistance Act (ISDEAA) is a vital mechanism allowing tribes to build capacity for governmental activities, but its function at the Department of the Interior must be improved.
- Support S. 286 – the Department of the Interior Tribal Self-Governance Act of 2015 to amend Title IV of ISDEAA
- Amending Title IV of ISDEAA makes it consistent with Title VI of the Act, the self-governance program for the Department of Health and Human Services.
- Identify champions and supporters in the House of Representatives to introduce and move forward companion legislation to S. 286.

BACKGROUND:

Amending Title IV of the Indian Self-Determination and Education Assistance Act (ISDEAA) is a top legislative priority for Indian Country. Over the past forty years, the ISDEAA has been one of the most successful mechanisms allowing tribes to develop the capacity for government-building activities. However, Title IV of the ISDEAA, the Self-Governance program within the Department of the Interior (DOI), has serious gaps and problems. Congress working with tribes must continue to advance the vision of the ISDEAA by working to amend Title IV of the ISDEAA to create consistency between Title IV Self-Governance in the DOI and Title V Self-Governance in the Department of Health and Human Services (HHS) and generate administrative efficiencies for self-governance tribes.

LEGISLATION:

S. 286 – DEPARTMENT OF THE INTERIOR TRIBAL SELF-GOVERNANCE ACT OF 2015

On January 28, 2015, Senate Committee on Indian Affairs (SCIA) Chairman Barrasso (R-WY) introduced S. 286 – the Department of the Interior Tribal Self-Governance Act of 2015. S. 286 was referred to the SCIA and is cosponsored by Senators Tester (D-MT), Murkowski (R-AK), Crapo (R-ID), Schatz (D-HI) and Franken (D-MN). The Congressional Budget Office has determined that S. 286 would have no significant effect on the federal budget over the 2015-2020 fiscal years and would not affect direct spending or revenues.

On February 4, 2015, SCIA held a mark-up and S. 286 was ordered to be reported without amendment favorably. At the mark-up, Senator McCain filed four amendments to S. 286 but all were withdrawn and were not offered during the mark up. Chairman Barrasso stated that he would continue to work to address the intent of these amendments with Senator McCain, Indian tribes, and the Department of Health and Human Services Inspector General. The amendments related to the Health and Human Services Office of Inspector Generator (HHS-OIG) report, *“Alert to Tribes on use of Indian Self-Determination and Education Assistance Act (ISDEAA) and Third Party Funds”*. This report raised concerns over how certain contracting dollars are being used and audit questions.

On July 7, 2015, S. 286 passed the Senate by Unanimous Consent and was sent to the House next for consideration. The Title IV Tribal Task Force has met with members in the House of Representatives; however, a primary sponsor has not yet been identified to introduce the Title IV amendments.

After the bill was passed, the Association of Fish and Wildlife Agencies (AFWA) raised concerns about the bill with Senate and House Members and staff. The primary concerns identified relate to the bill’s purported impact on non-BIA programs. The Task Force is helping SCIA staff and others address AFWA’s concerns and working towards having S. 286 passed in the House.

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MODERNIZE THE FEDERAL TRUST ASSET MANAGEMENT SYSTEM

KEY POINTS:

- Federal statutes and regulations governing the management of trust systems are antiquated and do not reflect the modern trust relationship between 21st Century tribes and the federal government.
- Tribes are in the best position to determine how their trust assets should be managed and protected.
- Support S. 383 and H.R. 383 to continue the modernization of the trust asset management system.

BACKGROUND:

Many of the federal statutes and regulations governing the management of trust systems were adopted several decades ago—some over 100 years ago—and have not kept up with the modern trust relationship between tribes and the federal government. 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. 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. 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.

LEGISLATION:

S. 383 & H.R. 812 – THE INDIAN TRUST ASSET REFORM ACT

Senator Crapo (R-ID) and Representative Simpson (R-ID) introduced 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.

The House Committee on Natural Resources Subcommittee on Indian, Insular, and Alaska Native Affairs held a hearing to discuss H.R. 812 where 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. 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.

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SUPPORT INDIAN ENERGY LEGISLATION S. 209 AND H.R. 538:

KEY POINTS:

- Traditional and renewable energy production in Indian Country is hindered by outdated and burdensome regulatory processes.
- Tribal energy resources are critical to America's efforts to achieve energy security and independence, reduce greenhouse gases, and will create careers and capital in Indian Country.
- Support S. 209 and H.R. 538 to remove federal barriers to Indian energy production and provide more tribal control and flexibility over their energy resources.

BACKGROUND:

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 elsewhere. Cumbersome bureaucratic processes, disincentives for 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 over 10 years ago, Congress and the Administration must 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.

LEGISLATION:

S. 209 – Indian Tribal Energy Development and Self-Determination Act Amendments of 2015

Introduced by Senator John Barrasso (R-WY), S. 209 seeks 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. S. 209 contains provisions that will: create additional consultation requirements for the Department of the Interior; improve the Tribal Energy Resource Agreements process in the Energy Policy Act of 2005 by recognizing tribal self-determination over energy resources; establish a process for creating and approving Tribal Energy Development Organizations; expand direct access to the Department of Energy's Weatherization Program; support American Indian and Alaska Native biomass demonstration projects; and amend the appraisal and right-of-way approval processes. The Senate Committee on Indian Affairs favorably passed this legislation out of Committee on February 4, 2015 and S. 209 is awaiting action by Senate.

H.R. 538 – The Native American Energy Act of 2015

Congressman Young (R-AK) introduced H.R. 538, his Native American energy legislation, which contains a few changes from the previous iterations, but 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 September 10, 2015, the House Committee on Natural Resources favorably passed this legislation out of Committee and it is ready for consideration by the House.

INDIAN EDUCATION

KEY POINTS:

- Support tribal provisions included in the Elementary and Secondary Education Act (ESEA) Reauthorizations, S. 1177 and H.R. 5.
- Support S. 1928, the Native Education Support and Training Act to recruit and retain teachers in Indian Country.
- Support S. 1419, the Native Language Immersion Student Achievement Act to encourage language immersion programs for Native students.
- Support funding and programmatic provisions in the reauthorization of the Higher Education Act.

BACKGROUND:

No resource is more important to the continued success and growth of our nation and Indian Country than our children. It is vital that we all work together to strengthen our human capital in all tribal communities across America. The most effective way to do that is to provide a high-quality, culturally-appropriate education that effectively and equally benefits all of our nation's children—including our Native children. Ensuring equal educational opportunities is not simply a matter of fairness, but even more importantly in today's challenging economic climate, it is an essential strategy for creating jobs and securing the nation's future prosperity especially in tribal communities. Education also drives personal advancement and wellness, which in turn improves social welfare and empowers communities—elements that are essential to protecting and advancing tribal sovereignty and maintaining tribes' cultural vitality.

The federal government provides education to Indian students in two ways, through federally funded Bureau of Indian Education (BIE) schools or through education assistance to public schools where Indian students attend. Currently 620,000, or 93 percent, of Indian students attend public schools and approximately 45,000, or 7 percent, attend BIE schools. 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 (TCU's) in the United States serving more than 30,000 Native students. TCUs were created in response to the higher education needs of American Indians and generally serve geographically isolated populations that have no other means accessing education beyond the high school level. TCUs have become increasingly important to educational opportunity for Native American students and are unique institutions that combine personal attention with cultural relevance to encourage American Indians—especially those living on reservations—to overcome the barriers they face to higher education.

As Congress renews its efforts this year in reforming Indian Education it is critical for tribal priorities to be included.

LEGISLATION:

S. 1177 & H.R. 5 - ELEMENTARY AND SECONDARY ACT REAUTHORIZATION

In July, both the House and the Senate passed legislation to reauthorize the Elementary and Secondary Education Act (ESEA). While the House bill – H.R. 5 – preserves the American Indian, Alaska Native and Native Hawaiian Education Title, the Senate bill – S.1177 – requires direct requests from tribal leaders and advocates for greater authority and support in ensuring Native student success.

S.1177 incorporates several tribal provisions, including a proposed new language immersion program in Title VII; stronger consultation requirements between State Education Agencies (SEAs)/Local Education Agencies (LEAs) and tribes; reauthorization of the State Tribal Education Partnership Program (STEP); technical assistance and outreach by the Secretary of Education to assist eligible LEAs/BIE schools with grant applications and improving implementation; and interagency research between the Departments of Interior and Education to identify policy implementation barriers, funding limitations, options for the recruitment and retention of teachers/administrators, and strategies to increase high school graduation rates.

S.1928, THE NATIVE EDUCATION SUPPORT AND TRAINING (NEST) ACT

Last month, Senator Tester introduced the NEST Act which aims to recruit and retain teachers in Indian Country by creating scholarships for Native students seeking education or school administration degrees, federal student loan forgiveness plans and teacher development courses for educators who commit to teaching at a tribal or BIE school.

S.1419, THE NATIVE LANGUAGE IMMERSION STUDENT ACHIEVEMENT ACT

In May, Senator Tester introduced the Native Language Immersion Student Achievement Act to amend Title VII of ESEA by establishing a new grant program to support schools using Native languages as the primary language of instruction and would assist schools in developing and maintaining language immersion programs.

HIGHER EDUCATION ACT (HEA) REAUTHORIZATION

The Higher Education Act authorization 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.

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Honor Trust and Treaty Obligations, Raise Spending Caps

REQUESTS

- End sequestration by raising spending caps for FY16 non-defense discretionary funding.
- Pass new appropriations, not a year-long Continuing Resolution (CR), which locks in sequestration.

End sequestration for fiscal year (FY) 2016 by raising the caps on non-defense discretionary funding, which is where most federal tribal programs are funded. The obligations to tribal citizens funded in the federal budget are the result of treaties negotiated and agreements made between Indian tribes and the U.S. in exchange for land and resources, known as the trust responsibility. Of the possible routes for final FY 2016 appropriations, a year-long CR would be the worst scenario for tribes, given that both House and Senate versions of appropriations bills include increases for tribal programs. NCAI urges a long-term budget deal to raise defense as well as non-defense spending caps.

Interior-Environment Appropriations

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

Bureau of Indian Affairs: In the final consideration of FY 2016 appropriations bills, NCAI urges Congress to retain at least the House level of funding for the Bureaus of Indian Affairs (BIA) and Indian Education (BIE). If more resources were made available, NCAI also would urge increases for tribal base funding in programs, such as BIA Social Services, law enforcement, tribal courts, and Natural Resources rights protection implementation.

(Dollars in millions)	FY 2015 Enacted	FY 2016 P.B.	House Bill	Bill vs. Enacted	Bill vs. P.B.	Senate Bill	Sen. vs. Enacted	Sen. vs. P.B.
OIP and CSC	2,429.2	2,660.6	2,505.7	76.4	-154.9	2,509.4	80.2	-151.2
Construction	128.9	188.9	187.6	58.7	-1.4	135.2	6.3	-53.8
Total BIA and BIE	2,601.5	2,924.9	2,766.4	164.9	-158.5	2,693.0	91.5	-231.9
% over FY15		12.4%	6.3%			3.5%		

Context: If the levels in the House bill were enacted, funding for BIA/OST would be slightly less than the FY2010 level, when adjusted for inflation, and less than the FY1979 level. Sequestration in FY 2013 erased many of the gains BIA’s budget made in FY2009 and FY2010, taking the budget back to FY2001 levels and lower than FY1977 in constant dollars.

Notable Differences in Between Bills

NCAI supports the language from the Senate version that establishes an indefinite appropriation for contract support costs, which would better protect against the use of other appropriations to meet shortfalls. As a final solution, NCAI supports reclassifying contract support costs as mandatory.

Federal Recognition Rider: The House Interior Appropriations bill contains a rider that would prevent the completion of the amendments to the Federal Recognition Regulations. The Senate bill does not include the tribal recognition rider. NCAI opposes this rider.

Indian Health Service: For FY 2016, Tribes requested a total funding amount of \$5.2 billion. This request would enable the funding of current services and include program expansion increases in

several key areas including purchased/referred care; hospitals and clinics; mental health and alcohol and substance abuse.

(Dollars in millions)	FY 2015 Enacted	FY 2016 P.B.	House Bill	Bill vs. Enacted	Bill vs. P.B.	Senate Bill	Sen. vs. Enacted	Sen. vs. P.B.
IHS Facilities	460.2	639.7	466.3	6.1	-173.4	521.8	61.6	-117.9
Total IHS, with CSC	4,642.4	5,102.9	4,787.9	145.5	-315.1	4,779.3	136.9	-323.7
IHS % over FY15		9.9%	3.1%			2.9%		

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.

Commerce-Justice-Science

Status: Passed House; approved by Senate Appropriations Committee

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.



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Trends in Selected Tribal Programs in the Federal Budget, FY 1977-FY2016



Executive Summary

Tribal leaders at national conventions, federal budget consultations, and in meetings with federal officials have requested up-to-date analyses of trends in federal spending on programs fulfilling the trust obligation to Indian tribes.¹ As governments, tribes must deliver a wide range of critical services to their citizens, such as education, workforce development, and first-responder and public safety services. As a consequence of federal actions and sequestration, Indian tribes across the nation have been forced to spend large amounts of scarce tribal funds to support the services that should have been provided or paid for by the United States. To improve understanding of the core programs for tribal governments/tribal entities, this paper examines large-scale trends in funding for the major Indian programs over time compared to broadly similar aggregates in funding for the entire US population.

Tribal Base Funding

This paper summarizes trends for some of the core tribal government related spending areas from FY 1977-2016 and FY 2000-2016, including Bureau of Indian Affairs (BIA), Indian Health Service (IHS), Indian housing, Indian education, and employment and training. The programs examined comprise about 65 percent of the funding identified in the Native American cross cut, excluding the Special Nutrition Assistance Program (SNAP), IHS reimbursements, and education loans/indirect education support. Moreover, this analysis compares trends rather than unmet needs, gaps in services, or impact, which would employ program evaluation methods for each agency and program, a much longer analysis and out of this report's scope. The trends account for inflation because deflated values provide a more realistic view of budget trends.

Overall Budget Trends

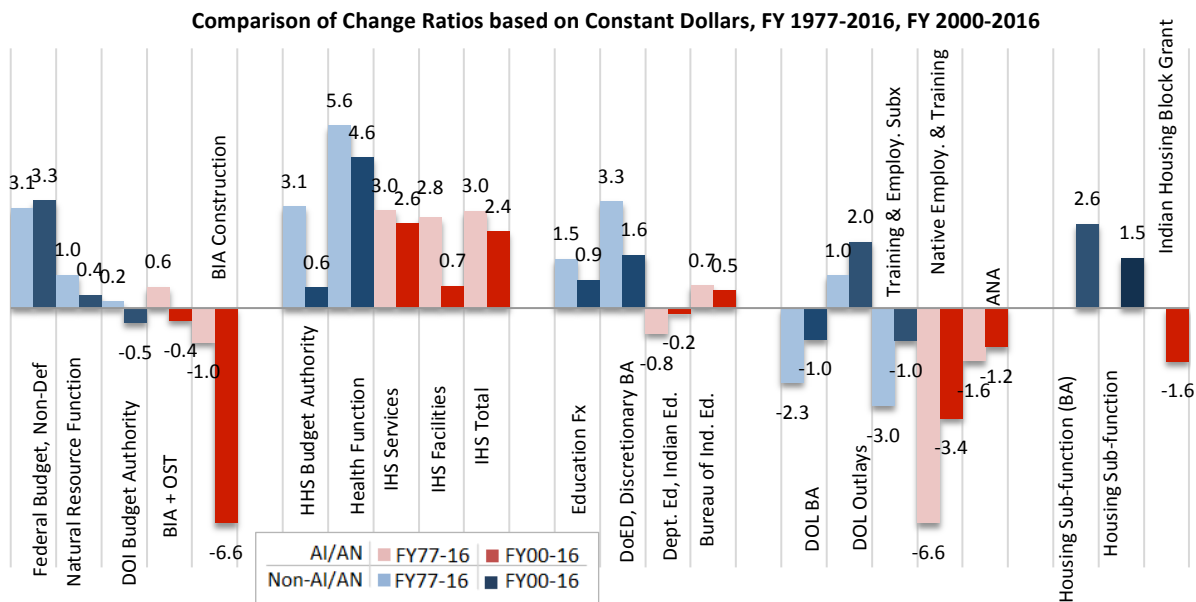
The comparison of Indian-related spending in constant dollars to comparable budget items across the federal budget shows that most Indian related spending areas continue to lag behind their non-Indian counterparts. This trend generally holds true over the FY1977 to FY2016 time period as well as over the FY2000 to FY 2016 time period. Among the Indian-related budget items, the Indian Health Service increased with the highest change ratio. In recent years, the IHS budget and BIA budgets have received increased investments compared to the discretionary budget authority for the departments in which they are housed (DOI and HHS, respectively). However, BIA's budget did not increase proportionally as much as the Natural Resource budget function. Similarly, the change ratio for the Health Budget function, which includes both discretionary and mandatory funding, was higher than for IHS, which is a discretionary program.

Cross-Cutting Recommendations

- Across each budget area, NCAI recommends that Indian-related spending should receive at least equitable increases as the comparable spending for the general population.

For more detail on definitions and budget trends in each category, see the corresponding pages in the report.

¹ See NCAI Resolution ATL-14-084: Recommendations for Addressing the State of Emergency in Federal Underfunding of the Trust



Bureau of Indian Affairs and Office of Special Trustee (See page 10)

- The BIA/OST change ratio and BIA alone ratio for both periods are slightly higher than the overall DOI change ratio, however, not as high as the overall Natural Resource budget function.
- Sequestration erased many of the gains BIA’s budget made in FY2009 and FY2010, taking the budget back to FY2001 levels and lower than FY1977 in constant dollars.
- If the FY 2016 President’s budget level were enacted, funding for BIA/OST would be at about the FY2010 level, when adjusted for inflation, and less than FY1979.

Health (See page 12)

- The health budget sub-function 551 had a much higher change ratio than the IHS over both time periods examined. The HHS outlays change ratio is also higher than the IHS change ratio.

Education (See page 14)

- Increases should support stable base funding for Indian education.
- Of any education spending category examined, Indian Education at the Department of Education (DoED) declined most steeply from FY1977 to FY2016.
- As a percent of the overall DoED discretionary budget, Indian Education reached a high point at 0.7 percent in FY1982, but then steadily declined to about 0.2 percent in FY2015.

Economic Development and Employment and Training (See page 16)

- Over both time periods, the Native American Employment and Training program declined more steeply than the overall DOL discretionary budget.
- Of any spending category in this section, the Native American Employment and Training program declined the most steeply.
- The Administration for Native Americans did not increase at the same rate as the HHS discretionary budget.

Housing (See page 18)

- The Indian Housing Block Grant (IHBG) had a lower change ratio compared to the housing spending categories for the general US population.
- The IHBG spending level decreased as a percentage of the overall discretionary budget authority for HUD from FY2000 to FY2016. In FY2000, IHBG comprised 2.9 percent of HUD’s discretionary budget, but declined to 1.2 percent in FY2006, and in FY2015, the most recent enacted appropriations bill, comprised 1.9 percent of HUD’s discretionary budget.

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Trends in Selected Tribal Programs in the Federal Budget, FY 1977-FY2016

Introduction

Tribal leaders at national conventions, federal budget consultations, and in meetings with federal officials have requested up-to-date analyses of trends in federal spending on programs fulfilling the trust obligation to Indian tribes.² Effective tribal governments that can meet the essential needs of their citizens require the fulfillment of the federal trust responsibility and respect for tribal self-determination. This paper reports on spending for tribes based on their political status, as opposed to race or income status, and on spending that meets the federal trust responsibility.

Trust Responsibility: Indian tribes ceded millions of acres of land that made the United States what it is today, and in return tribes have the right of continued self-government and the right to exist as distinct peoples on their own land. For its part, the United States has assumed a trust responsibility to protect these rights. Part of this trust responsibility includes ensuring basic governmental services in Indian Country, funding for which is appropriated in the discretionary portion of the federal budget. As governments, tribes must deliver a wide range of critical services to their citizens, such as education, workforce development, and first-responder and public safety services. Funding decisions by the Administration and Congress are an expression of our nation's policy priorities, and the federal budget for tribal governmental services reflects the extent to which the United States honors its obligations to Indian people. As a consequence of federal actions and sequestration, Indian tribes across the nation have been forced to spend large amounts of scarce tribal funds to support the services that should have been provided or paid for by the United States. Thus, this paper reports on federal dollars that meet trust obligations and promote tribal governance.

Trends in Core Tribal Governmental Services: Tribal leaders as part of the Tribal Interior Budget Council have requested more information and detail on the Native American cross cut³ of federal funding for Indian tribes and their citizens.⁴ Specifically, tribal representatives identified the need for data on the most highly accessed and important programs that tribes depend on as "base funding," the number of tribes accessing the programs and funding opportunities, whether tribes must compete with other entities such as state and local governments, whether the funding passes through states, whether a match is required, and whether indirect costs are allowed. Other questions include why tribes have challenges accessing new funding opportunities and what action agencies could take to address those challenges. To improve understanding of the core programs for tribal governments/tribal entities, this paper examines large-scale trends in funding for the major Indian programs over time compared to broadly similar aggregates in funding for the entire US population.

Figure 1 shows the amounts enacted in fiscal year (FY) 2015 for programs serving tribes and AI/AN people, according to Office and Management and Budget cross cut data, in which spending on tribal and AI/AN people in FY 2015 totaled over \$19 billion. However, some of the programs included only provide indirect support for American Indian/Alaska Native (AI/AN) individuals eligible according to set criteria instead of for tribes, such as the Supplemental Nutrition Assistance Program (more than \$1 billion), a mandatory nutrition program administered by states that assists low-income households, or Higher Education Act

² See NCAI Resolution ATL-14-084: Recommendations for Addressing the State of Emergency in Federal Underfunding of the Trust Responsibility

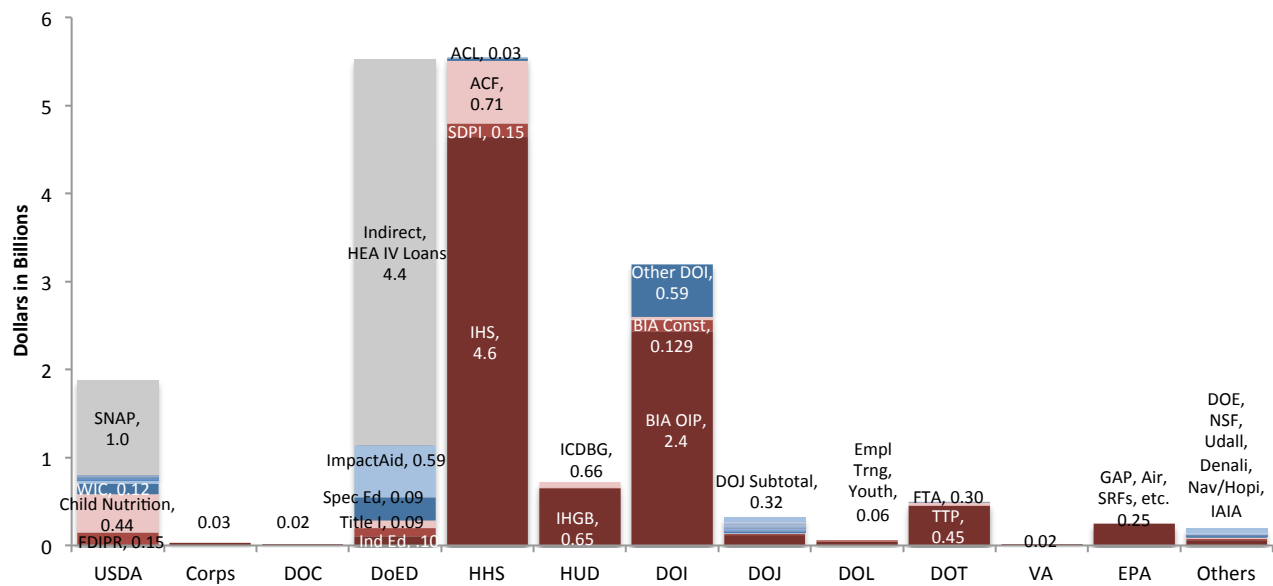
³ Native American Crosscut, FY 2016 Federal Funding for Programs Serving Tribes and Native American Communities, accessed at <http://www.doi.gov/budget/budget-data.cfm>

⁴ Tribal Interior Budget Council. (2015). Action Tracking Document, Motion passed on May 22, 2014 for a subgroup to work with OMB on Crosscut Document

Title IV student aid loans and other indirect education support (totaling more than \$4 billion), both gray in Figure 1. Although other programs provide benefits to Native people or children, such as Impact Aid and Special Education, many tribes or tribal entities may not administer them.

This paper summarizes trends for some of the core tribal government related spending areas from FY 1977-2016 and FY 2000-2016, including Bureau of Indian Affairs (BIA), Indian Health Service (IHS), Indian housing, Indian education, and employment and training. Other departments provide recurring tribal funding for transportation, environmental protection, nutrition, and justice, but historical data for comparison may not be available. The programs examined here make up about 65 percent of the funding identified in the Native American cross cut, excluding SNAP, IHS reimbursements, and HEA Title IV loans/indirect education support. Lastly, this analysis compares trends rather than unmet needs, gaps in services, or impact, which would employ program evaluation methods for each agency and program, a much longer analysis and out of this report’s scope.

Figure 1: FY15 Enacted Amounts for Programs Serving Tribes and Native American Communities



Data source: NCAI analysis of the Native American Crosscut, FY 2016 Federal Funding for Programs Serving Tribes and Native American Communities, included as an appendix to this paper.

Key for Federal Departments Ag: Agriculture, Corps: Army Corps of Engineers, DOC: Commerce, Ed: Education, HHS: Health and Human Services, HUD: Housing and Urban Development, DOI: Interior, DOJ: Justice, DOL: Labor, DOT: Transportation, VA: Veterans Affairs, EPA: Environmental Protection Agency, SNAP: Supplemental Nutrition Assistance Program, WIC: Special Supplemental Nutrition Program for Women, Infants, and Children, FDIPR: Food Distribution Program on Indian Reservations, HEA: Higher Education Act, ACL: Administration for Community Living, ACF: Administration for Children and Families, SDPI: Special Diabetes Program for Indians, IHGB: Indian Housing Block Grant, ICDBG: Indian Community Development Block Grant, OIP: Operation of Indian Programs, FTA: Federal Transit Administration, TTP: Tribal Transportation Program, GAP: General Assistance Program, SRFs: State Revolving Funds, DOE: Department of Energy, Others include independent agencies with small amounts of tribal funding, such as Denali Commission, National Science Foundation, Smithsonian, and the Institute for American Indian Arts

Methodology

Each budget area in Table 1 and 2 includes: 1) the average level of spending in each year over time, 2) the annual change for each area, 3) the ratio of annual change to the average spending level, and 4) how consistent the change is. The analysis includes trends in current dollars as well as inflation-adjusted dollars, which affords a better assessment of real change in spending. The average or mean level of spending during the periods FY 1977-2016 and FY 2000-2016 (all enacted levels except FY 2016, which is analyzed as proposed in the President’s Budget) was calculated by dividing the spending over the entire time period by the number of years in that time period.

Annual change and trend consistency over the same period were determined by a time-series linear regression analysis. The annual change is the “slope” of the line – the regression coefficient.

The annual change shows how much the spending on a particular budget item changes for every year that passes. Trend consistency is the coefficient of determination, or r^2 , generated by a regression analysis. If the r^2 is closer to 1, then the trend is very consistent. If the r^2 is closer to 0, then the trend is very irregular. The change ratio is the annual change divided by the average level of spending to control for relative sizes of various budgets. Data sources for this paper include FY 2016 Historical Tables of the Budget of the US Government, the Congressional Research Service memorandum, “Indian-Related Federal Spending Trends, FY 1975-FY2001,” and relevant appropriations bills. Table 1 displays trends in dollars before inflation adjustment. Table 2 and the remaining analysis display inflation adjusted dollars. The table highlights agencies serving tribes in light gray.

Table 1: Trends in Selected Programs, Functions in the Federal Budget in Nominal Dollars, FY1977-FY2016

Dollar figures in millions		Average Level (A)	Annual Change (B)	Change Ratio (B/A)	(r^2) Trend Consistency
Overall	Total Federal Non-Defense Budget ⁵	1,330,452.2	70,523.0	5.30	0.93
	Natural Resources Function ⁶	25,190.5	915.86	3.64	0.87
	DOI Discretionary Budget Authority ⁷	8,270.6	244.23	2.95	0.92
	BIA and OST ⁷	1,834.5	59.9	3.26	0.94
	BIA ⁸	1,761.9	53.9	3.06	0.94
	BIA construction ⁷	189.9	3.5	1.83	0.13
Health	HHS Discretionary Budget Authority ⁶	44,152.6	2,288.0	5.18	0.90
	Health Function Budget Authority ⁹	151,672.8	10,797.0	7.12	0.89
	IHS ⁷	1,970.5	101.0	5.12	0.97
	IHS Facilities ⁷	267.5	13.4	5.00	0.77
	IHS, total ⁷	2,238.0	114.3	5.11	0.97
Edu.	DoED, Discretionary Budget Authority ¹⁰	37,308.8	2,030.8	5.44	0.68
	Education Function ¹¹	59,886.3	2,475.3	4.13	0.82
	DoEd, Indian Education ⁷	92.4	2.1	2.29	0.71
	DOI, Indian Education ⁷	510.4	17.0	3.33	0.93
Econ. Dev.	Training and Employment Sub-Function ¹⁰	7,249	31.0	0.43	0.05
	DOL Discretionary B.A. ⁹	10,716.4	110.4	1.03	0.29
	DOL Outlays ¹²	48,838.6	1,882.6	3.85	0.42
	Indian & Nat. Am. Training & Employ. ¹³	71.1	-2.3	-3.20	0.37
	Administration for Native Americans	38.0	0.6	1.49	0.79

⁵ Table 3.1—Outlays By Superfunction and Function: 1940–2020, FY 2016 Historical Tables

⁶ Table 5.1—Budget Authority By Function and Subfunction: 1976–2020, FY 2016 Historical Tables, Function 300

⁷ Table 5.4—Discretionary Budget Authority by Agency: 1976–2020, FY 2016 Historical Tables

⁸ Public Budget Database, Budget of the United States Government, FY 2016, Budget Analysis Branch, February 2015

⁹ Table 5.1—Budget Authority by Function and Subfunction: 1976–2020, FY 2016 Historical Tables, Function 551

¹⁰ Table 5.4—Discretionary Budget Authority by Agency: 1962–2020, FY 2016 Historical Tables

¹¹ Table 3.2—Outlays by Function and Subfunction: 1962–2020, FY 2016 Historical Tables

¹² Table 4.1—Outlays by Agency: 1962–2020, FY 2016 Historical Tables

¹³ Walke, R. (2000). Indian-Related Federal Spending Trends, FY 1975-FY2001, Appendix Table 1 and US Department of Labor, Training and Employment Programs, Summary of Budget Authority, FY 1984 to 2013, Budget Authority Tables

As an example, from FY1977 to FY2016 the average level of spending for BIA/OST was \$1.8 billion, increasing by about \$60 million a year, for a change ratio of 3.3 in current dollars (before adjusting for inflation).

Table 2 shows the trends in selected programs but adjusted for inflation in 2009 dollars. To account for inflation, nominal dollar amounts were deflated using the Gross Product Deflator (Chained Price Index, non-defense), from Table 10.1 of the Historical Budget Tables of the FY 2016 Budget of the United States.¹⁴ Deflated amounts show the purchasing power of the nominal dollar in 2009, which was selected as the base year for this paper. Deflated values are the level of goods and services that can be purchased with a nominal dollar amount after the purchasing power of that amount has been adjusted for inflation. That is, \$1 dollar in 2014 will purchase the goods and services \$.92 bought in 2009.

An agency's budget may increase in nominal dollars, but when inflation is taken into account, the increase will be much smaller, or even a decline, in constant dollars. For instance, in current dollars (which means before adjusting for inflation), the BIA/OST budget increased by a 3.3 change ratio from FY1977 to FY2016. But when accounting for inflation, the BIA/OST budget increased with a 0.6 change ratio each year. This pattern occurs in all the spending categories examined and provides a more realistic view of respective budget trends. The following analysis reviews trends in spending in constant dollars. Budget data in nominal as well as constant dollars are included in Appendix 1 and 2 at the end of this report.

Table 2: Trends in Selected Programs, Functions in the Federal Budget in Constant Dollars, FY1977-FY2016

	Dollar figures in millions	Average Level (A)	Annual Change (B)	Change Ratio (B/A)	(r ²) Trend Consistency
Overall	Total Federal Non-Defense Budget	1,595,884.4	49,176.0	3.08	0.92
	Natural Resources Function	32,346.3	329.9	1.02	0.34
	DOI Discretionary Budget Authority	10,927.4	21.2	0.19	0.03
	BIA and OST	2,385.1	15.3	0.64	0.29
	BIA	2,309.3	9.2	0.40	0.15
	BIA construction	263.2	-2.8	-1.05	0.06
Health	HHS Discretionary Budget Authority	52,919.2	1,651.6	3.12	0.81
	Health Function Budget Authority	168,684.9	9,472.8	5.62	0.92
	IHS Services	2,367.5	7.1	3.01	0.97
	IHS Facilities	324.4	9.0	2.78	0.46
	IHS, total	2,691.9	80.3	2.98	0.95
Edu.	DoED, Discretionary Budget Authority	44,530.9	1,461.2	3.28	0.51
	Education Function	75,660.4	1,155.4	1.53	0.41
	DoEd, Indian Education	126.5	-1.0	-0.78	0.16
	DOI, Indian Education	662.4	4.6	0.69	0.24
Econ. Dev.	Training and Employment Sub-Function	10,862.2	-327.9	-3.0	0.40
	DOL Discretionary B.A.	15,534.0	-348.8	-2.3	0.33
	DOL Outlays	62,745.5	638.2	1.02	0.07
	Indian & Native Am. Training & Employment	125.4	-8.3	-6.6	0.43
	Administration for Native Americans	53.6	-0.9	-1.63	0.45

¹⁴ Table 10.1—Gross Domestic Product and Deflators Used in the Historical Tables: 1940–2020, non-defense

Figure 2 shows the change ratios listed in Table 2 for BIA, OST, DOI, the Natural Resources Budget Function, the Department of Health and Human Services (HHS), the Health Budget Function, the Indian Health Service (IHS), IHS Facilities, Department of Education, the Education Budget Function, Indian Education at the Department of Education, Bureau of Indian Education (BIE), Training and Employment Budget Function, and Indian and Native American Employment and Training over the FY1977-FY 2016 time period, adjusted for inflation. Table 3 displays deflated budget data for the FY2000-2016 time period.

Figure 2: Comparison of Change Ratios based on Constant Dollars, FY1977-FY2016



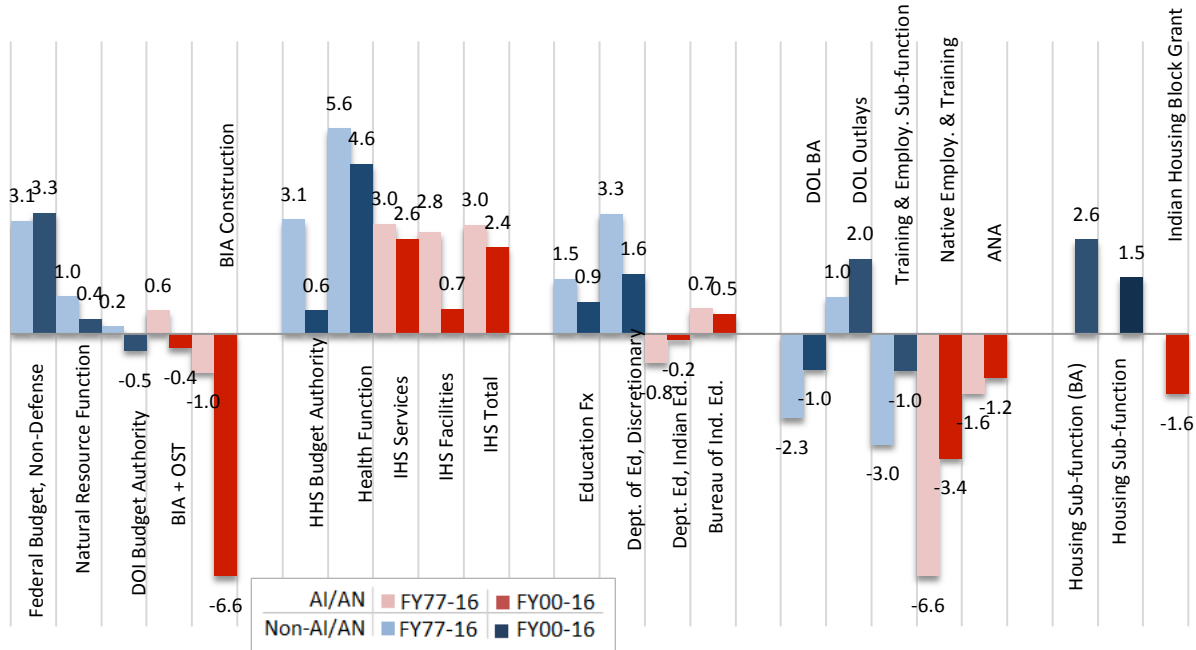
Table 3: Trends in Selected Programs and Functions in the Federal Budget in Constant Dollars, FY2000-FY2016

	Dollar figures in millions	Average Level	Annual Change	Change Ratio	(r ²) Trend Consistency
Overall	Total Federal Non-Defense Budget	2,200,017.0	72,746.0	3.31	0.88
	Natural Resources Function	37,461.8	150.5	0.40	0.02
	DOI Discretionary B.A.	11,713.8	-53.2	-0.45	0.09
	BIA and OST	2,655.8	-10.3	-0.39	0.08
	BIA	2,488.3	-8.1	-0.33	0.06
	BIA Construction	278.1	-18.4	-6.62	0.37
Health	HHS Discretionary B.A.	75,389.8	478.1	0.63	0.05
	Health Function B.A.	283,696.0	13,170.0	4.64	0.81
	IHS Services	3,200.2	83.1	2.60	0.91
	IHS Facilities	440.2	3.0	0.67	0.02
	IHS, total	3,640.4	86.1	2.36	0.85
Edu.	DoED, Discretionary Budget Authority	64,988.8	1,059.6	1.63	0.05
	Education Function	93,697.9	930.0	0.99	0.06
	DoEd, Indian Education	126.2	-0.2	-0.16	0.01
	DOI, Education, BIE	721.5	3.9	0.54	0.28
Housing	Housing Assistance Sub-Function (B.A.)	40,364.4	1,042.0	2.58	0.08
	Housing Assistance Sub-Function (Outlays)	43,756.5	674.7	1.54	0.35
	Indian Housing Block Grant	695.3	-11.4	-1.64	0.18
Econ Dev	Training and Employment Subfunction	8,159.2	-82.7	-1.01	0.13
	Indian and Native American Training & Empl	54.6	-1.9	-3.40	0.96
	Administration for Native Americans	47.3	-0.6	-0.60	0.49

Overall Budget Trends

To display overall trends across agencies, Figure 3 compares change ratios for two time periods and groups tribal programs next to the comparable programs serving the general population. Figure 3 shows the inflation-adjusted change ratios over the FY 1977 to FY 2016 time period compared to the FY 2000 to FY 2016 time periods. The blue bars represent spending areas that benefit the entire US general population and the red bars signify the change ratios for major Indian-related spending areas. The dark red and dark blue represent the change ratios from FY 2000 to FY 2016 and the lighter red and lighter blue bars show the change ratios from FY 1977 to FY 2016.

Figure 3: Comparison of Change Ratios based on Constant Dollars, FY 1977-2016, FY 2000-2016



The comparison in constant dollars of Indian-related spending to comparable budget items across the federal budget shows that most Indian related spending areas continue to lag behind their non-Indian counterparts. This trend generally holds true over the FY1977 to FY2016 time period as well as over the FY2000 to FY 2016 time period. Among the Indian-related budget items, the Indian Health Service increased with the highest change ratio (3.0 from FY1977 to FY2016). Encouragingly, in recent years, the IHS budget and BIA budgets have received increased investments relative to the discretionary budget authority for the departments in which they are housed (DOI and HHS, respectively). However, BIA’s budget did not increase proportionally as much as the Natural Resource budget function. Similarly, the change ratio for the Health Budget function (5.6), which includes both discretionary and mandatory funding, was higher than for IHS, which is a discretionary program.

Cross-Cutting Recommendations

- Across each budget area, NCAI recommends that the Indian-related spending should receive at least equitable increases as the comparable spending for the general population.
- The inequity in Figure 3 points to the need to move funding for the federal trust responsibility out of the constraints of the discretionary side of the federal budget.

The remainder of this paper provides detail on the above spending categories, exploring the fluctuation over time, and offering more information on each spending category.

Bureau of Indian Affairs and Office of Special Trustee

- NCAI urges at least equitable increases to BIA and BIA construction relative to the comparable spending for the general population.
- Increases should support stable base funding for core tribal government programs.

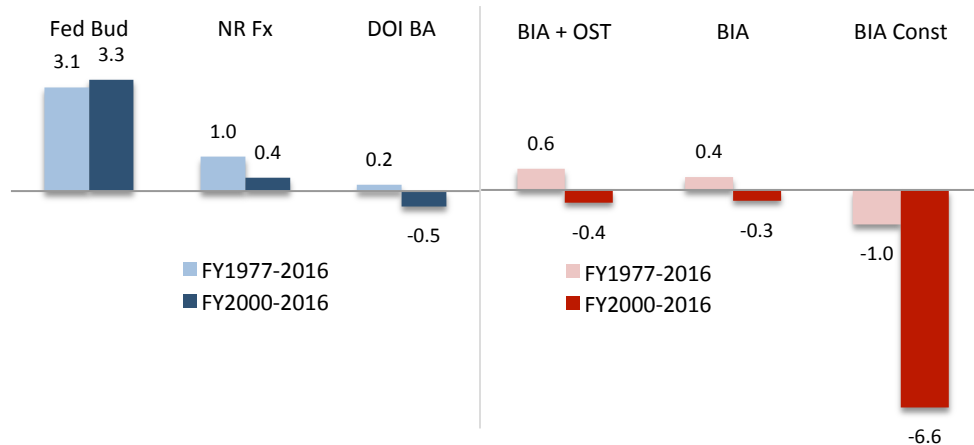
Overall, from FY 1977 to FY 2016, BIA and OST spending increased on average \$59.9 million a year (a 3.06 change ratio), representing a higher change ratio than the Department of the Interior’s budget over the same time period (2.95) but a much lower change ratio than the total federal non-defense budget of 5.3 (see Table 1). When adjusted for inflation in Table 4, BIA and OST spending increased on average \$15.3 million a year in constant 2009 dollars (a 0.64 change ratio), with a higher change ratio than the Department of the Interior’s budget had over the same time period (0.19). However, overall federal spending over the same time period went up at a rate of \$49.2 billion a year (3.1 change ratio).

Table 4: Trends in DOI, Natural Resources, and BIA in Constant Dollars (Millions)

		Average Level	Annual Change	Change Ratio	(r ²) Trend Consistency
FY 2000-2016					
Overall	Total Federal Non-Defense Budget	2,200,017.0	72,746.0	3.31	0.88
	Natural Resources Function	37,461.8	150.5	0.40	0.02
	DOI Discretionary B.A.	11,713.8	-53.2	-0.45	0.09
	BIA and OST	2,655.8	-10.3	-0.39	0.08
	BIA	2,488.3	-8.1	-0.33	0.06
	BIA Construction	278.1	-18.4	-6.62	0.37
FY 1977-2016					
Overall	Total Federal Non-Defense Budget	1,595,884.4	49,176.0	3.08	0.92
	Natural Resources Function	32,346.3	329.9	1.02	0.34
	DOI Discretionary Budget Authority	10,927.4	21.2	0.19	0.03
	BIA and OST	2,385.1	15.3	0.64	0.29
	BIA	2,309.3	9.2	0.40	0.15
	BIA construction	263.2	-2.8	-1.05	0.06

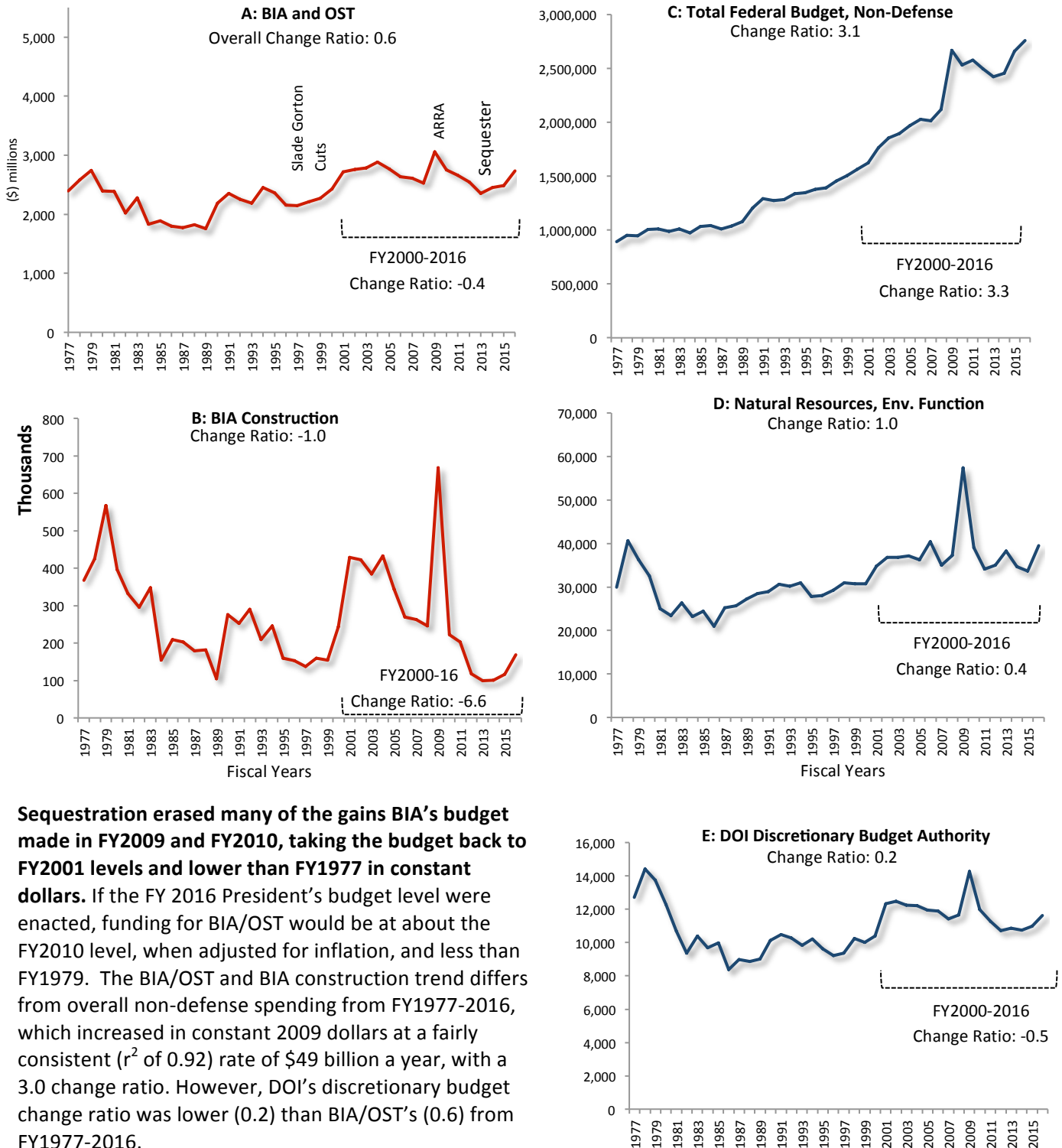
Figure 4 shows the inflation adjusted change ratios for BIA/OST and BIA construction compared to the federal budget, natural resource budget function, and DOI budget authority. The ratios cover two time periods: the light blue and red cover FY 1977-2016 and the dark blue and red cover FY 2000-2016. **The BIA/OST change ratio and BIA alone ratio for both periods are slightly higher than the overall DOI change ratio, however, not as high as the overall Natural Resource budget function (0.4 from FY 2000-2016 and 1.0 from FY 1977-2016).**

Figure 4: Change Ratios in BIA Compared to DOI, Natural Resources, and the Federal Budget



The line graphs in Figure 5 show the BIA/OST budget from FY1977 to FY2016, adjusted for inflation, followed by the trend for the BIA construction account, the total federal budget (excluding defense and payments on the national debt), and the Natural Resources Budget function. From FY1977 to the levels proposed in the FY2016 President’s budget, BIA and OST’s budget trend has been irregular, with declines in the mid-1980s, gains in the early 1990s, reductions again in the mid-1990s, and high points in FY2004 and FY2010 (excluding one-time Recovery Act funds in FY2009).

Figure 5: FY1977-2016 BIA Trends in Inflation Adjusted Dollars



Sequestration erased many of the gains BIA’s budget made in FY2009 and FY2010, taking the budget back to FY2001 levels and lower than FY1977 in constant dollars. If the FY 2016 President’s budget level were enacted, funding for BIA/OST would be at about the FY2010 level, when adjusted for inflation, and less than FY1979. The BIA/OST and BIA construction trend differs from overall non-defense spending from FY1977-2016, which increased in constant 2009 dollars at a fairly consistent (r^2 of 0.92) rate of \$49 billion a year, with a 3.0 change ratio. However, DOI’s discretionary budget change ratio was lower (0.2) than BIA/OST’s (0.6) from FY1977-2016.

Health

- NCAI urges at least equitable increases to the comparable spending for the general population on health care, in this case the Health Budget Function 551.

Table 5 and Figure 6 show federal spending for the Department of Health and Human Services (HHS), IHS, and health budget authority according to the health budget sub-function 551. The federal budget is divided into categories known as budget functions, which include all spending for a given topic, regardless of agency. Sub-function 551 is health care services, discretionary and mandatory. The health 551 sub-function budget authority averaged \$168.7 billion in constant dollars during FY1977-2016, increasing at a rate of \$9.5 billion a year, and with a change ratio of 5.6. During the same time period, expenditures at HHS averaged \$465 billion, increasing at \$21.5 billion a year, for a change ratio of 4.6. IHS appropriations increased at a lower change ratio (3.0) than for HHS outlays, HHS discretionary budget authority (3.1) and the health care services budget sub-function from FY1977 to FY2016. However, from FY2000 to FY2016, IHS overall had a higher change ratio (2.4) than the discretionary budget authority at HHS (0.6), but did not match the change ratios for HHS outlays (4.0) or the overall health care budget sub-function (4.6).

Table 5: Trends in Health, HHS, and IHS in Constant Dollars (Millions)

FY2000-2016		Average Level	Annual Change	Change Ratio	(r ²) Trend Consistency
Health	HHS Discretionary Budget Authority	75,389.8	478.1	0.63	0.05
	HHS Outlays ¹⁵	723,487	28983	4.01	0.96
	Health Care Services Sub-Function B.A.	283,696.0	13,170.0	4.64	0.81
	IHS Services	3,200.2	83.1	2.60	0.91
	IHS Facilities	440.2	3.0	0.67	0.02
	IHS, total	3,720.4	109.9	2.95	0.84
FY1977-2016		Average Level	Annual Change	Change Ratio	(r ²) Trend Consistency
Health	HHS Discretionary Budget Authority	52,919.2	1,651.6	3.12	0.81
	HHS Outlays	465,193.8	21,562.0	4.64	0.96
	Health Care Services Sub-Function B.A.	168,684.9	9,472.8	5.62	0.92
	IHS Services	2,367.5	7.1	3.01	0.97
	IHS Facilities	324.4	9.0	2.78	0.46
	IHS, total	2,691.9	80.3	2.98	0.95

Figure 6: Health Change Ratios based on Constant Dollars

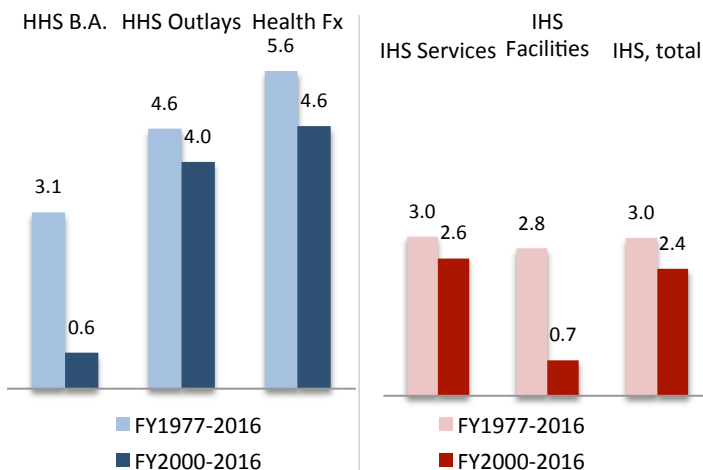
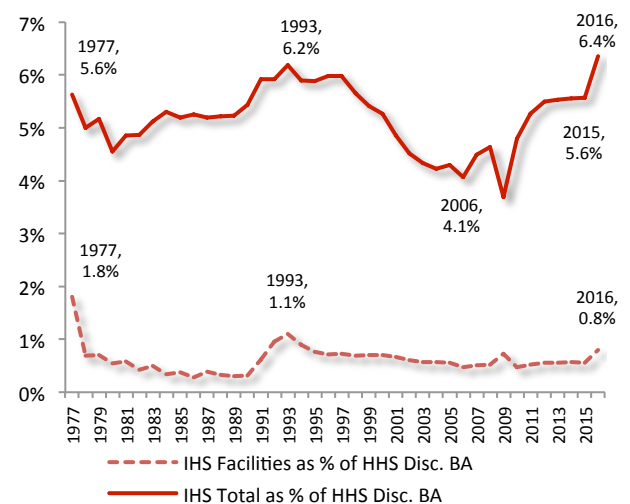


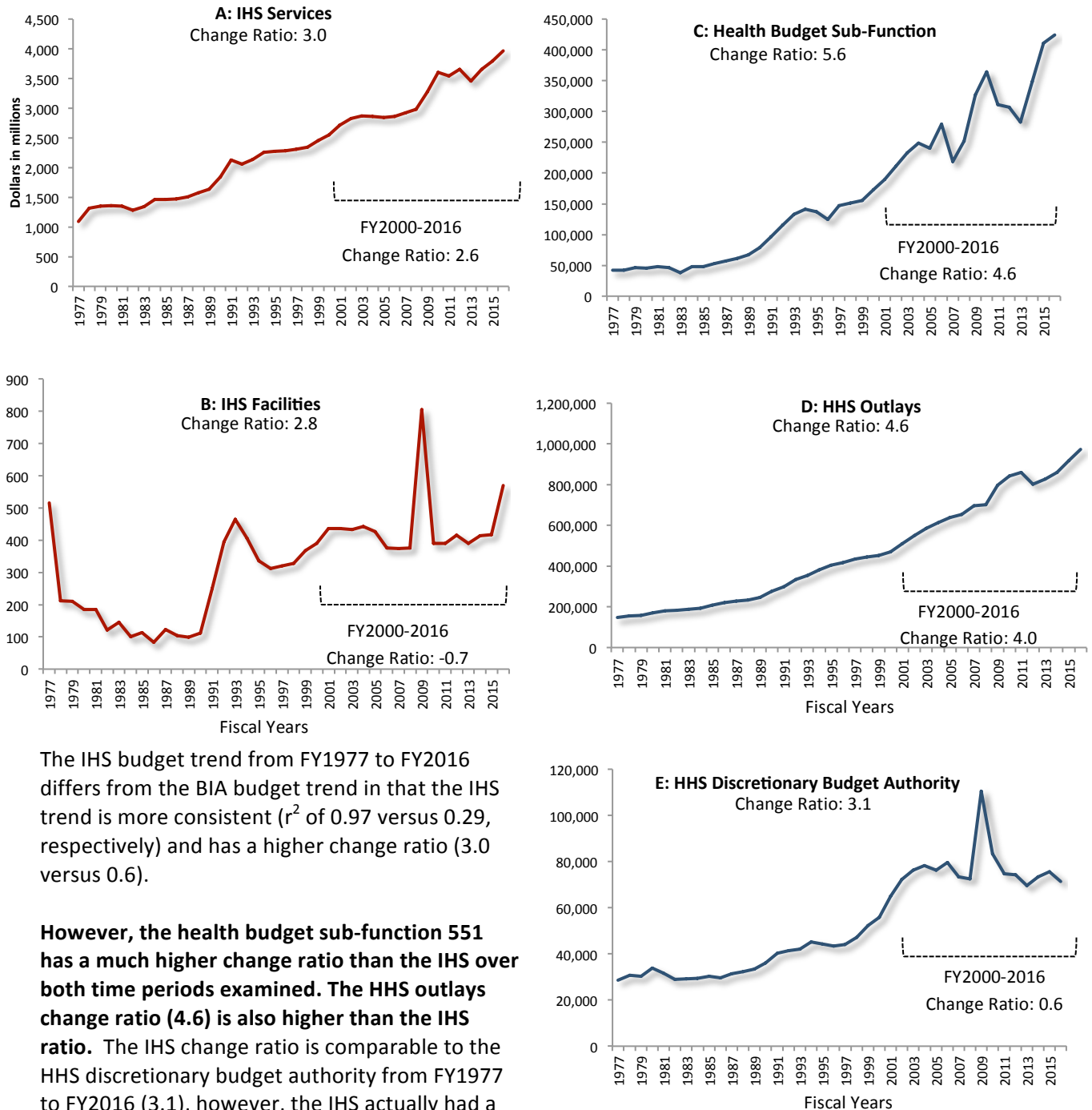
Figure 7: IHS as Percent of HHS Discretionary Budget



¹⁵ Table 4.1—Outlays by Agency: 1962–2020, FY2016 Historical Tables

The line graphs in Figure 8 show the IHS budget from FY1977 to FY2016, adjusted for inflation, followed by the trend for IHS facilities, HHS discretionary budget authority, HHS outlays, and the health care services budget sub-function for comparisons with similar aggregate spending for the general population.

Figure 8: FY1977-2016 Inflation Adjusted Health Trends



The IHS budget trend from FY1977 to FY2016 differs from the BIA budget trend in that the IHS trend is more consistent (r^2 of 0.97 versus 0.29, respectively) and has a higher change ratio (3.0 versus 0.6).

However, the health budget sub-function 551 has a much higher change ratio than the IHS over both time periods examined. The HHS outlays change ratio (4.6) is also higher than the IHS ratio. The IHS change ratio is comparable to the HHS discretionary budget authority from FY1977 to FY2016 (3.1), however, the IHS actually had a higher ratio (2.6) than HHS did in discretionary budget authority (0.6) from FY2000 to FY2016. IHS facilities had the lowest change ratio of any health category examined, 2.8 from FY1977 to FY2016 and -0.7 from FY2000 to FY2016. The FY2016 President’s budget includes a substantial increase for the IHS facilities budget, without which, the change ratio would be even lower over both time periods.

Education

- NCAI urges at least equitable increases to the comparable spending for the general population on education, in this case Department of Education.
- Increases should support stable base funding for Indian education.

Table 6 shows trends in education spending, including discretionary budget authority for Department of Education (DoED); Training, Employment, and Social Services Budget Function 500; DoED Indian Education; and DOI Bureau of Indian Education (BIE). Overall, the DoED discretionary budget authority (see Figure 11C) averaged \$44.5 billion from FY1977 to FY2016 and grew at a rate of \$1.5 billion a year, for a change ratio of 3.3. Education outlays had a lower change ratio (2.6) than the overall federal non-defense budget change ratio (3.1) from FY1977 to FY2015. The DoED Indian Education spending averaged \$126.5 million, declining at a rate of \$1 million a year, with a change ratio of -0.8 from FY1977 to FY2016. BIE averaged \$662.4 million over the same time period, increasing at a rate of \$4.6 million a year, for a change ratio of 0.7, also a lower change ratio than the overall Department of Education budget authority (3.3).

Table 6: Trends in Education Spending in Constant Dollars (Millions)

FY 2000 -FY 2016		Average Level	Annual Change	Change Ratio	(r ²) Trend Consistency
	Total Federal Non-Defense Budget	2,200,017.0	72,746.0	3.31	0.88
Edu.	DoED, Discretionary Budget Authority	64,988.8	1,059.6	1.63	0.05
	Education Function	93,697.9	930.0	0.99	0.06
	DoED, Indian Education	126.2	-0.2	-0.16	0.01
	DOI, Education, BIE	721.5	3.9	0.54	0.28
FY 1977-FY 2016		Average Level	Annual Change	Change Ratio	(r ²) Trend Consistency
	Total Federal Non-Defense Budget	1,595,884.4	49,176.0	3.08	0.92
Edu.	DoED, Discretionary Budget Authority	44,530.9	1,461.2	3.28	0.51
	Education Function	75,660.4	1,155.4	1.53	0.41
	DoED, Indian Education	126.5	-1.0	-0.78	0.16
	DOI, Indian Education	662.4	4.6	0.69	0.24

Figure 9: Education Change Ratios based on Constant Dollars

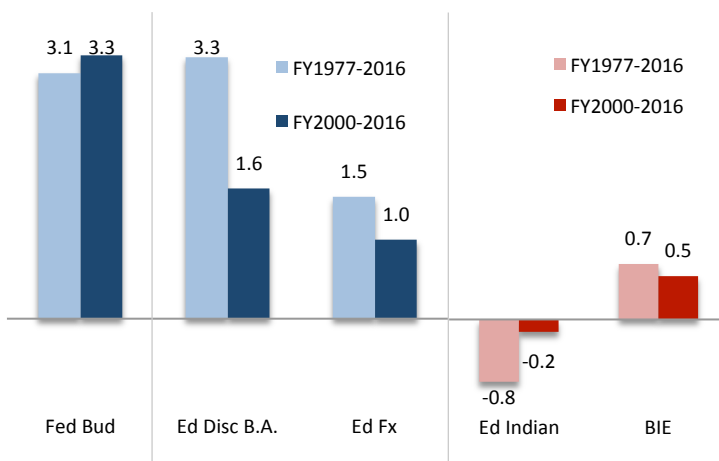


Figure 10: Indian Ed. as Percent of DoED Budgets

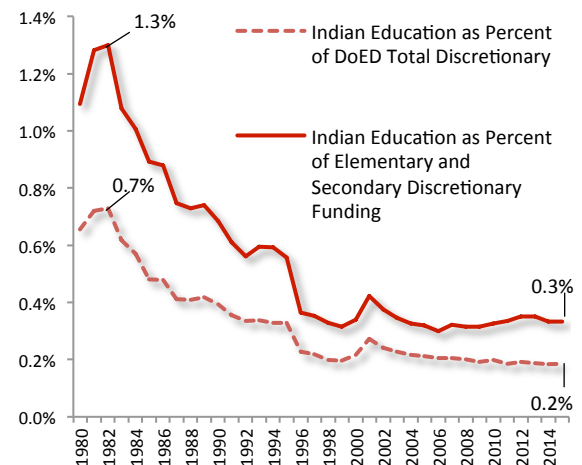
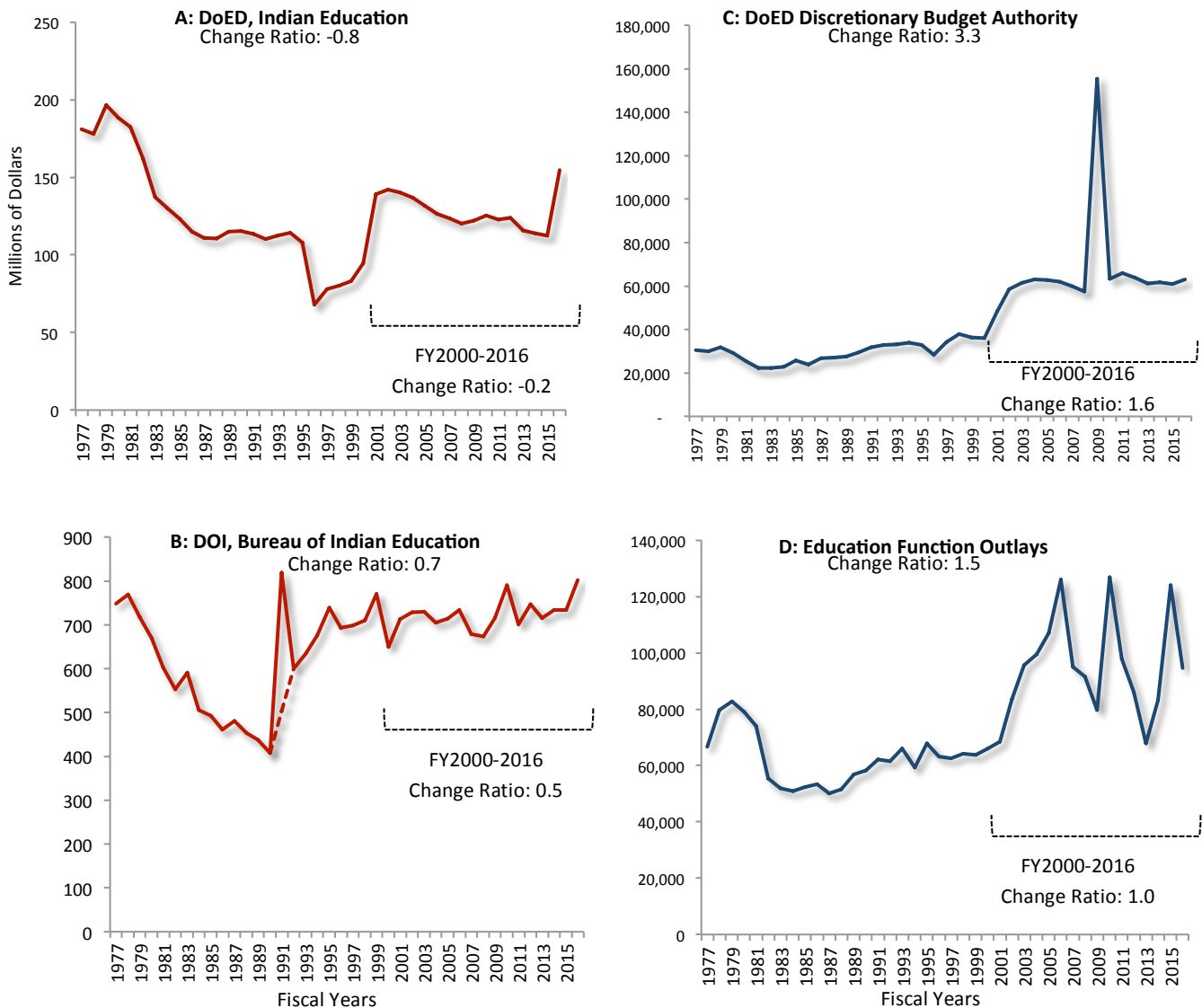


Figure 9 shows the change ratios for the education spending categories in Table 6. **Of any education spending category, Indian Education at DoED declined most steeply from FY1977 to FY2016.** Figure 10 displays DoED Indian Education as a percentage of the total discretionary funding in DoED and as a percentage of the Elementary and Secondary discretionary funding. **As a percent of the overall DoED discretionary budget, Indian Education reached a high point at 0.7 percent in FY1982, but then steadily declined to about 0.2 percent in FY2015.**

The line graphs in Figure 11A-D show education budget trends adjusted for inflation for the Department of Education (DoED) discretionary spending, DoED Indian Education, DOI Bureau of Indian Education, and the federal budget function for Education, Training, Employment, and Social Services.

Indian Education at DoED from FY1977 to FY2016 shows the steepest decline for both time periods examined and the most irregular funding (r^2 of 0.16 from FY1977 to FY2016). In FY1996, DoED Indian Education received a substantial reduction after a longterm downward trend from FY1977 to FY1995, followed by large increases in FY1999 and FY2001. However, spending declined after FY2002 through FY2015, when adjusted for inflation. The FY2016 President’s budget includes a substantial increase of about \$50 million, mostly targeted for the Special Programs for Indian Children to make new Native Youth Community Project (NYCP) awards, which are on top of grants to Local Education Agencies, the principal vehicle for addressing the particular needs of AI/AN children in public schools. The change ratio for BIE at DOI was higher from FY1977 to FY2016 (0.7), although BIE’s budget saw steady declines from FY1977 to FY1990, then an increase for forward funding in FY1991, and irregular increases up to FY2016.

Figure 11: FY1977-2016 Inflation Adjusted Education Trends



Economic Development and Employment and Training

- NCAI urges at least equitable increases to the comparable spending for the general population on employment and training and economic development.

This section compares funding for the Native American Employment and Training Program, the Administration for Native Americans (ANA), the Department of Labor (DOL) discretionary budget authority, DOL outlays (which includes mandatory spending), and the Training and Employment budget sub-function. For all spending areas examined except DOL outlays, the programs and departments lost ground over both time periods, FY1977 to FY2016 and FY2000 to FY2016. The Training and Employment sub-function funding declined in constant dollars by a change ratio of -3.0 (\$327.9 million a year) on an average spending level of \$10.8 billion. However, the Native American Employment and Training program declined by a change ratio of -6.6 over the same time period (losing about \$8 million a year), on an average spending level of \$125 million in 2009 constant dollars.

Table 7: Trends in Employment and Training Spending in Constant Dollars (Millions)

		Average Level	Annual Change	Change Ratio	(r ²) Trend Consistency
FY2000-FY2016					
Economic Dev.	Training and Employment Subfunction	8,159.2	-82.7	-1.0	0.13
	DOL Discretionary B.A.	12,727.0	-123.2	-1.0	0.13
	DOL Outlays	74,973.7	1,528.1	2.0	0.04
	Indian and Native American Training & Empl	54.6	-1.9	-3.4	0.96
	Administration for Native Americans	47.3	-0.6	-1.2	0.49
FY1977-FY2016					
Economic Dev.	Training and Employment Subfunction	10,862.2	-327.9	-3.0	0.40
	DOL Discretionary B.A.	15,534.0	-348.8	-2.3	0.33
	DOL Outlays	62,745.5	638.2	1.0	0.07
	Indian and Native American Training & Empl	125.4	-8.3	-6.6	0.43
	Administration for Native Americans	53.6	-0.9	-1.6	0.45

Figure 12: Change Ratios based on Constant Dollars

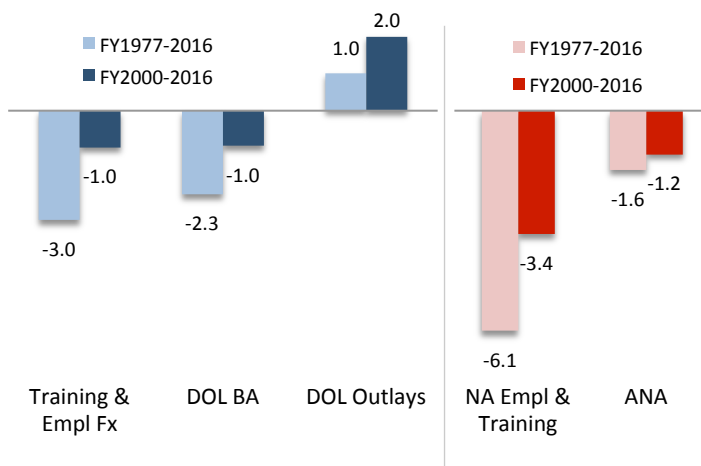
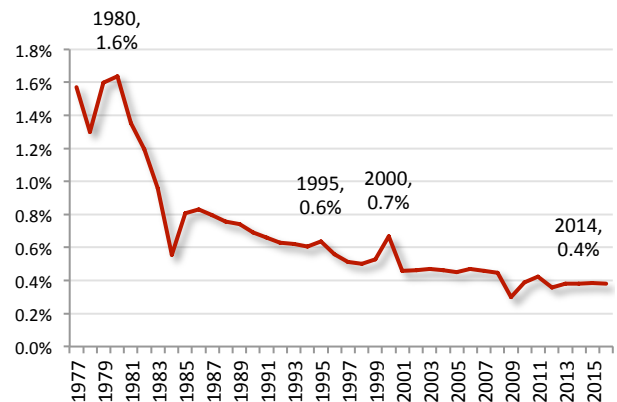
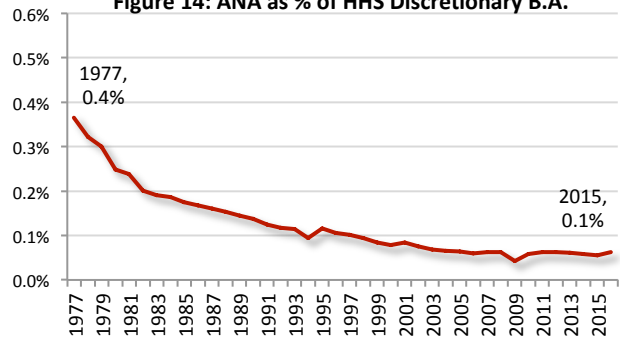


Figure 13: INAP as % of DOL Discretionary B.A.



Over both time periods the Native American Employment and Training program declined more steeply than the overall DOL discretionary budget, as shown in Figure 12 as well as Figure 13. The ANA declined with a smaller change ratio (-1.6) than for DOL discretionary spending (-2.3); but compared to HHS, ANA’s budget shrank as a percentage of the HHS discretionary budget from 0.4 percent to 0.1 percent from FY 1977 to FY 2015 (Figure 14).

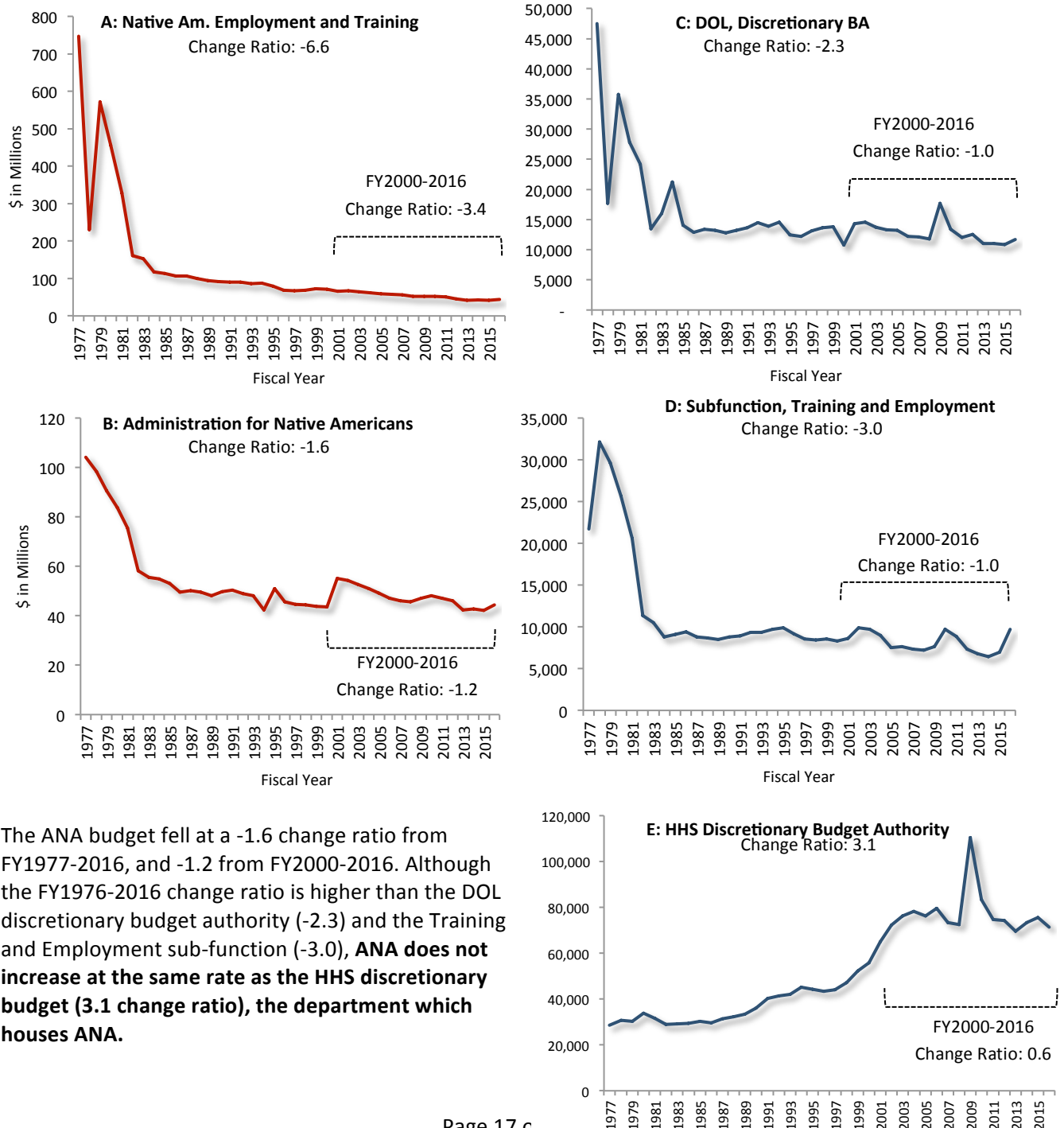
Figure 14: ANA as % of HHS Discretionary B.A.



The line graphs in Figure 15A-E display the budget trends for the spending categories in Table 7, as well as HHS, the department which houses ANA.

Of any spending category in this section, the Native American Employment and Training program declined in nominal and inflation adjusted dollars the most steeply, both over FY1977 to FY2016 (-6.6 change ratio) and FY2000 to FY2016 (-3.4 change ratio). The downward trend for the FY2000-2016 time period was very consistent (r^2 of 0.96). The DOL discretionary budget authority experienced an uneven (r^2 of 0.33) decline with a change ratio of -2.3 from FY1977-2016, although negative, a smaller absolute value for a change ratio than the Native American Employment and Training program.

Figure 15: FY1977-2016 Inflation Adjusted Economic Development Budget Trends



The ANA budget fell at a -1.6 change ratio from FY1977-2016, and -1.2 from FY2000-2016. Although the FY1976-2016 change ratio is higher than the DOL discretionary budget authority (-2.3) and the Training and Employment sub-function (-3.0), **ANA does not increase at the same rate as the HHS discretionary budget (3.1 change ratio), the department which houses ANA.**

Housing

- NCAI urges at least equitable increases to the comparable spending for the general population on housing.

Table 8 displays trends in housing spending from FY2000-2016. The budget authority for Housing Assistance sub-function 604 averaged about \$40.4 billion from FY2000 to FY2016, increasing \$1.0 billion each year on average, for a 2.6 change ratio. Housing Assistance sub-function outlays increased about \$674.7 million a year on a \$43.8 billion average spending level, for a change ratio of 1.5. The discretionary budget authority for the Department of Housing and Urban Development over the same time period did not increase with as high of a change ratio (0.1) as the sub-function 604 B.A. and outlays did. **Like other Indian-related budget items, the Indian Housing Block Grant (IHGB) had the lowest change ratio (-1.6) compared to the housing spending categories for the general US population.** From FY2000 to FY2016, the IHGB lost about \$11.4 million a year on an average spending level of \$695.3 million, for a change ratio of -1.6. See Figure 16 for a comparison of the change ratios for housing spending categories from FY2000 to FY2016.

Table 8: Trends in Housing Spending in Constant Dollars (Millions) FY2000-FY2016

Dollars in millions		Average Level	Annual Change	Change Ratio	(r ²) Trend Consistency
Housing	Total Federal Non-Defense Budget	2,200,017.0	72,746.0	3.31	0.88
	Housing Assistance Sub-Function 604 (B.A.)	40,364.4	1,042.0	2.58	0.08
	Housing Assistance Sub-Function 604 (Outlays)	43,756.5	674.7	1.54	0.35
	HUD Budget Authority	38,022.0	40.9	0.11	0.00
	Indian Housing Block Grant	695.3	-11.4	-1.64	0.18

Figure 16: Housing Change Ratios based on Constant Dollars

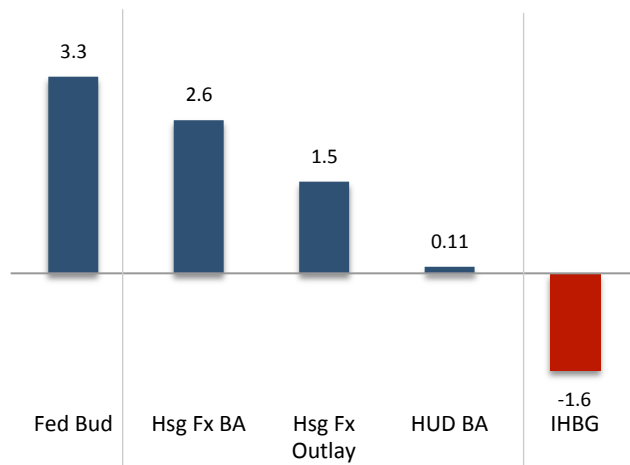


Figure 17: IHGB as % of HUD Budget Authority

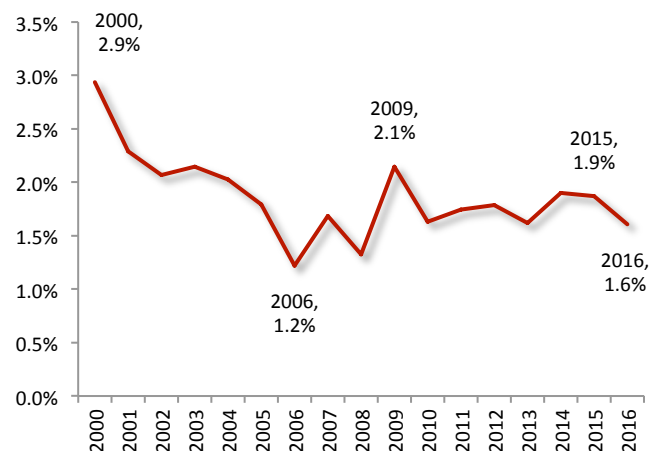
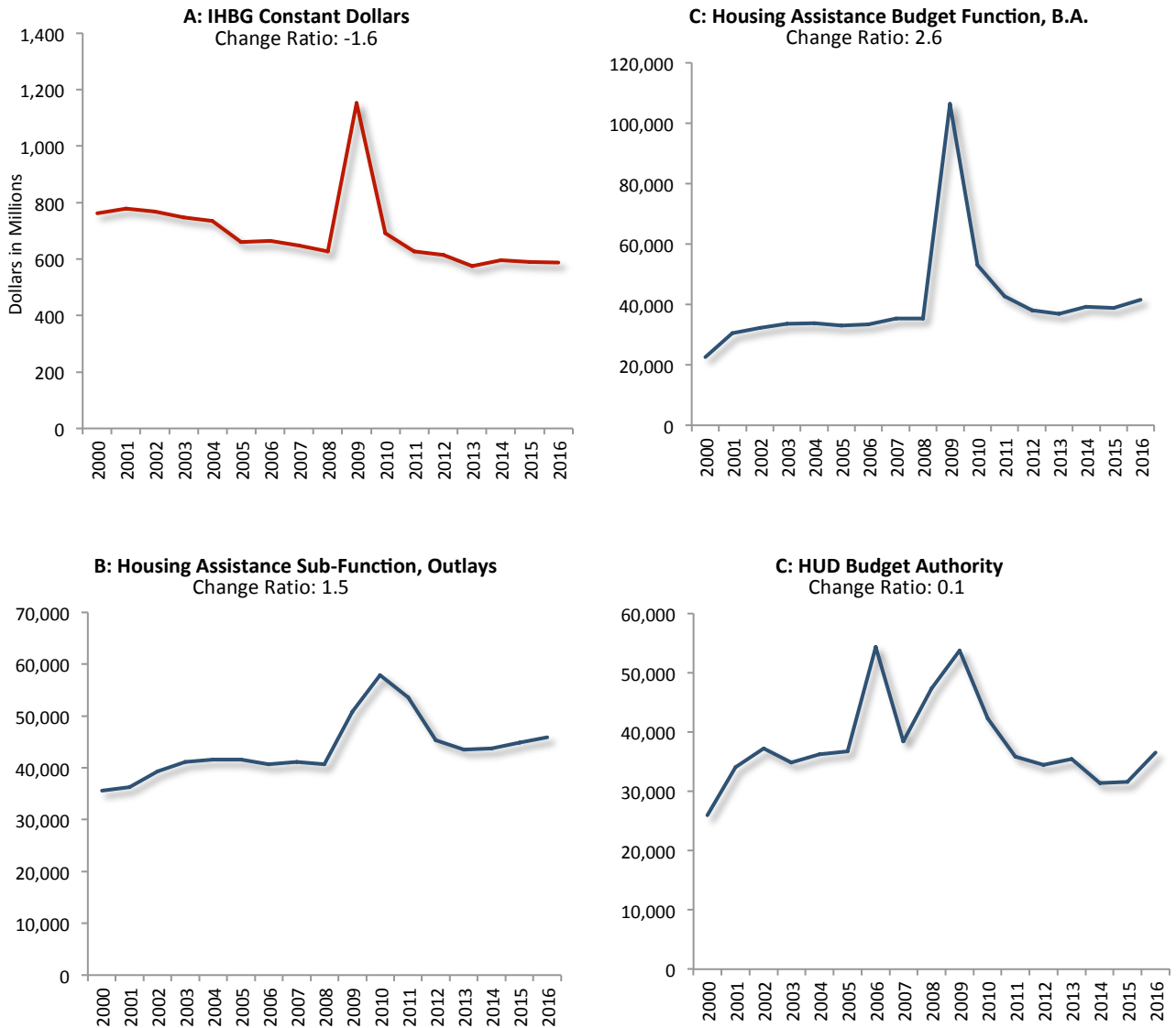


Figure 17 shows that the IHGB spending level decreased as a percentage of the overall discretionary budget authority for HUD from FY2000 to FY2016. In FY2000, IHGB comprised 2.9 percent of HUD’s discretionary budget, but declined to 1.2 percent in FY2006, and in FY2015, the most recent enacted appropriations bill, comprised 1.9 percent of HUD’s discretionary budget.

Figure 18A-D displays housing budget trends. The line graphs for housing spending show very irregular budget trends, likely due to the infusion of federal funds as a part of the American Recovery and Reinvestment Act.

Figure 18: Inflation Adjusted Housing Budget Trends



Appendix Table 1. Budget Data for Selected Programs, in Current Dollars, FY1977-FY2016
Dollar amounts in millions

Fiscal Year	Fed Bud, Non-Defense	Natural Resources Budget Function	DOI Disc. B.A.	BIA/OST	BIA Const.	HHS Discretionary B.A.	Health Function, 551	IHS	IHS Facilities
1977	282,077	9,489	4,026	757	116	9,048,487	13,403	346	163
1978	318,793	13,651	4,837	868	142	10,274,092	14,225	442	71
1979	345,053	13,251	5,019	1,001	207	11,023,322	17,028	492	77
1980	404,413	13,096	4,950	964	160	13,639,796	18,480	547	74
1981	451,962	11,171	4,781	1,068	149	14,206,351	21,520	607	83
1982	475,402	11,263	4,499	970	142	13,896,089	22,097	618	58
1983	508,653	13,297	5,240	1,150	176	14,696,506	19,228	679	74
1984	513,293	12,276	5,116	969	81	15,554,958	25,240	772	54
1985	564,125	13,332	5,459	1,032	114	16,600,774	26,454	801	62
1986	580,993	11,713	4,682	1,006	113	16,495,045	29,416	821	46
1987	583,410	14,570	5,196	1,026	104	18,131,524	32,880	870	71
1988	622,253	15,370	5,321	1,092	109	19,348,787	36,749	946	63
1989	671,207	16,973	5,605	1,090	65	20,709,503	42,011	1,020	62
1990	769,327	18,121	6,453	1,395	176	22,940,511	50,425	1,176	72
1991	856,492	19,216	6,957	1,559	168	26,657,054	63,879	1,411	166
1992	883,839	21,266	7,139	1,564	201	28,747,465	80,086	1,427	274
1993	919,589	21,621	7,047	1,570	150	30,134,297	95,637	1,530	334
1994	977,181	22,578	7,457	1,791	179	32,958,269	102,938	1,646	297
1995	1,011,545	20,919	7,224	1,775	120	33,311,000	103,099	1,707	253
1996	1,053,683	21,492	7,057	1,647	117	33,161,000	95,446	1,745	239
1997	1,086,630	22,923	7,326	1,680	107	34,398,000	114,741	1,807	250
1998	1,143,146	24,344	8,064	1,742	125	37,112,000	118,709	1,841	258
1999	1,197,318	24,403	7,964	1,803	123	41,436,000	123,638	1,948	292
2000	1,271,638	25,003	8,462	1,973	198	45,366,000	140,537	2,074	317
2001	1,351,947	28,957	10,268	2,265	357	54,152,000	157,657	2,266	363
2002	1,491,489	31,098	10,539	2,332	357	61,098,000	178,787	2,389	369
2003	1,602,093	31,771	10,579	2,402	332	65,825,000	200,807	2,476	374
2004	1,676,783	32,845	10,796	2,550	382	69,151,000	219,528	2,530	391
2005	1,792,677	33,000	10,883	2,523	313	69,445,000	219,113	2,596	389
2006	1,906,627	38,063	11,200	2,482	254	74,804,000	262,668	2,692	353
2007	1,940,319	33,732	11,024	2,513	253	70,763,000	210,534	2,819	361
2008	2,113,721	37,156	11,634	2,521	245	72,233,000	251,630	2,972	375
2009	2,669,763	57,392	14,287	3,061	668	110,544,000	327,095	3,276	805
2010	2,567,400	39,657	12,158	2,789	225	84,573,000	369,259	3,658	395
2011	2,667,543	35,356	11,684	2,754	210	77,276,000	322,458	3,666	404
2012	2,638,867	36,959	11,324	2,684	124	78,339,000	324,586	3,866	440
2013	2,600,335	41,038	11,654	2,528	106	74,626,000	303,786	3,713	419
2014	2,673,676	37,721	11,714	2,672	110	79,845,000	379,795	3,983	452
2015	2,931,923	37,181	12,128	2,741	129	83,330,000	453,963	4,182	460
2016	3,100,903	44,356	13,072	3,069	189	80,251,000	477,378	4,463	640
Source	Table 3.1 Outlays	Table 5.1	Table 5.4	Public Budget Database	Public Budget	Table 5.4	Table 5.1	Public Budget	Public Budget

Appendix Table 1. Budget Data for Selected Programs, in Current Dollars, FY1977-FY2016, Continued
Dollar amounts in millions

Fiscal Year	DoED	Education Function Outlays	DoED Indian Education	DOI Indian Ed	Training & Employ. sub fx	DOL	DOL Outlays	INAP	ANA
1977	9,674	21,104	57	237	6,877	15,046	23,225	236.5	33.0
1978	10,097	26,710	60	258	10,784	5,934	23,694	77.2	33.0
1979	11,650	30,223	72	262	10,833	13,054	23,448	208.7	33.1
1980	11,717	31,843	76	270	10,345	11,220	30,542	183.8	33.8
1981	11,409	33,152	82	270	9,241	10,830	30,911	146.8	33.8
1982	10,689	26,612	78	266	5,464	6,479	31,479	77.4	28.0
1983	11,265	26,197	69	298	5,295	8,065	38,683	77.4	28.0
1984	12,046	26,920	69	267	4,644	11,222	25,348	62.2	29.0
1985	14,057	28,592	67	270	4,972	7,709	24,738	62.2	29.0
1986	13,388	29,776	64	257	5,257	7,173	24,934	59.6	27.7
1987	15,538	28,921	64	278	5,084	7,716	24,208	61.5	29.0
1988	16,235	30,931	66	271	5,215	7,906	22,662	59.7	29.7
1989	17,138	35,328	72	273	5,292	7,970	23,442	59.0	30.0
1990	18,738	37,171	74	260	5,619	8,415	26,087	58.2	31.7
1991	21,184	41,235	75	543	5,934	9,025	34,790	59.6	33.4
1992	22,869	42,741	77	416	6,479	10,034	47,889	63.0	33.9
1993	23,853	47,380	81	455	6,700	9,954	45,452	61.9	34.5
1994	24,709	43,286	84	494	7,097	10,630	37,819	64.2	31.0
1995	24,664	51,027	81	555	7,430	9,378	32,808	59.8	38.4
1996	21,698	48,321	52	531	7,030	9,366	33,163	52.5	34.9
1997	26,637	48,975	61	546	6,681	10,250	31,088	52.5	34.9
1998	29,752	50,512	63	558	6,636	10,705	30,580	53.8	34.9
1999	28,766	50,605	66	612	6,783	10,979	32,995	57.8	34.9
2000	29,362	53,764	77	529	6,777	8,761	31,873	58.4	35.4
2001	40,103	57,094	116	594	7,192	11,958	39,707	55.0	46.0
2002	49,505	70,566	120	615	8,354	12,320	64,686	57.0	45.8
2003	53,112	82,587	121	630	8,379	11,834	69,563	55.6	45.5
2004	55,650	87,974	121	623	7,918	11,790	56,687	54.7	45.2
2005	57,179	97,555	120	651	6,852	12,037	46,949	54.2	44.8
2006	58,429	118,482	119	691	7,199	11,472	43,138	53.7	44.3
2007	57,843	91,656	119	654	7,080	11,682	47,544	53.7	44.3
2008	57,227	91,287	120	672	7,181	11,768	58,838	52.8	45.5
2009	155,408	79,749	122	716	7,652	17,698	138,157	52.8	47.0
2010	64,132	128,598	127	801	9,854	13,550	173,053	52.8	48.8
2011	68,346	101,233	127	726	9,139	12,456	131,975	52.7	48.8
2012	67,386	90,823	131	789	7,779	13,239	104,588	47.6	48.6
2013	65,708	72,808	124	768	7,271	11,861	803,07	45.1	45.5
2014	67,303	90,615	124	799	7,013	12,043	567,74	46.1	46.5
2015	67,136	136,756	124	809	7,692	11,947	527,97	46.1	46.5
2016	70,748	106,342	174	902	10,936	13,181	569,21	50.0	50.0
Source	Table 3.1 Outlays	Table 5.1	Table 5.4	Public Budget Database	Public Budget	Table 5.4	Table 5.1	Public Budget	Public Budget

Appendix Table 2. Budget Data for Selected Programs, in Constant Dollars, FY1977-FY2016
Dollar amounts in millions

Fiscal Year	Federal budget non-defense outlays	Natural Resources Budget Function	DOI Disc. B.A.	BIA/OST	BIA Const.	HHS Discretionary B.A.	Health Function, 551	IHS	IHS Facilities
1977	891,239	29,981	12,720	2,393	367	28,588	42,348	1,093	516
1978	950,203	40,689	14,417	2,586	425	30,623	42,399	1,317	212
1979	945,092	36,294	13,747	2,742	568	30,192	46,639	1,348	211
1980	1,003,257	32,488	12,280	2,392	396	33,838	45,845	1,356	184
1981	1,009,294	24,946	10,677	2,386	332	31,724	48,057	1,355	185
1982	989,596	23,445	9,365	2,020	295	28,926	45,997	1,286	121
1983	1,007,832	26,346	10,382	2,278	348	29,120	38,098	1,346	146
1984	972,146	23,250	9,689	1,835	154	29,460	47,803	1,462	102
1985	1,031,684	24,382	9,984	1,888	209	30,360	48,380	1,465	113
1986	1,039,902	20,965	8,380	1,800	203	29,524	52,651	1,469	83
1987	1,009,535	25,212	8,991	1,776	179	31,376	56,896	1,505	123
1988	1,038,473	25,651	8,880	1,823	182	32,291	61,330	1,579	104
1989	1,078,591	27,275	9,007	1,752	105	33,280	67,509	1,640	99
1990	1,207,356	28,438	10,127	2,189	276	36,003	79,135	1,845	112
1991	1,291,843	28,983	10,493	2,351	253	40,207	96,348	2,128	251
1992	1,273,910	30,651	10,290	2,255	290	41,434	115,431	2,056	395
1993	1,282,193	30,146	9,826	2,189	209	42,016	133,348	2,133	465
1994	1,338,421	30,925	10,214	2,453	246	45,142	140,992	2,255	407
1995	1,346,572	27,847	9,617	2,363	160	44,344	137,246	2,272	337
1996	1,376,644	28,079	9,220	2,152	153	43,325	124,701	2,280	312
1997	1,389,908	29,321	9,371	2,149	137	43,998	146,765	2,311	320
1998	1,454,199	30,968	10,258	2,216	159	47,210	151,010	2,342	328
1999	1,507,198	30,719	10,025	2,270	155	52,160	155,637	2,452	368
2000	1,563,361	30,739	10,403	2,426	243	55,773	172,777	2,550	390
2001	1,622,207	34,746	12,321	2,718	428	64,977	189,173	2,719	436
2002	1,765,494	36,811	12,475	2,760	423	72,322	211,632	2,828	437
2003	1,855,993	36,806	12,256	2,783	385	76,257	232,631	2,868	433
2004	1,897,243	37,163	12,215	2,885	432	78,243	248,391	2,863	442
2005	1,967,164	36,212	11,942	2,769	343	76,204	240,440	2,849	427
2006	2,026,602	40,458	11,905	2,638	270	79,511	279,196	2,861	375
2007	2,012,153	34,981	11,432	2,606	262	73,383	218,328	2,923	374
2008	2,119,869	37,264	11,668	2,528	246	72,443	252,362	2,981	376
2009	2,669,763	57,392	14,287	3,061	668	110,544	327,095	3,276	805
2010	2,531,703	39,106	11,989	2,750	222	83,397	364,125	3,607	390
2011	2,577,087	34,157	11,288	2,661	203	74,656	311,524	3,542	390
2012	2,497,272	34,976	10,716	2,540	117	74,136	307,169	3,659	416
2013	2,423,425	38,246	10,861	2,356	99	69,549	283,118	3,460	390
2014	2,454,490	34,629	10,754	2,453	101	73,299	348,660	3,656	415
2015	2,657,653	33,703	10,993	2,485	117	75,535	411,497	3,791	417
2016	2,758,810	39,463	11,630	2,730	168	71,398	424,714	3,971	569
Source	Table 3.1 Outlays	Table 5.1	Table 5.4	Public Budget Database	Public Budget	Table 5.4	Table 5.1	Public Budget	Public Budget

Appendix Table 2. Budget Data for Selected Programs, in Constant Dollars, FY1977-FY2016, Continued
Dollar amounts in millions

Fiscal Year	DoED	Education Function Outlays	DoED Indian Education	DOI Indian Ed	Training & Employ. sub fx	DOL	DOL Outlays	INAP	ANA
1977	30,566	66,679	181	748	6,877	47,539	73,381	801	104.3
1978	30,095	79,613	178	770	10,784	17,687	70,623	247	98.4
1979	31,909	82,780	196	718	10,833	35,755	64,224	613	90.7
1980	29,067	78,995	188	670	10,345	27,834	75,768	489	83.9
1981	25,478	74,033	182	603	9,241	24,185	69,029	353	75.5
1982	22,250	55,396	162	553	5,464	13,487	65,527	174	58.3
1983	22,320	51,906	137	591	5,295	15,980	76,646	165	55.5
1984	22,814	50,985	130	505	4,644	21,254	48,008	128	54.9
1985	25,708	52,290	123	493	4,972	14,098	45,241	124	53.0
1986	23,963	53,295	115	461	5,257	12,839	44,629	115	49.7
1987	26,887	50,045	111	481	5,084	13,352	41,890	115	50.2
1988	27,094	51,620	111	453	5,215	13,194	37,820	107	49.5
1989	27,540	56,770	115	438	5,292	12,807	37,670	102	48.2
1990	29,407	58,335	116	408	5,619	13,206	40,940	98	49.8
1991	31,952	62,195	114	819	5,934	13,612	52,474	96	50.3
1992	32,962	61,604	110	600	6,479	14,462	69,024	97	48.9
1993	33,259	66,062	112	634	6,700	13,879	63,374	93	48.1
1994	33,843	59,288	114	676	7,097	14,560	51,800	95	42.4
1995	32,833	67,927	108	739	7,430	12,484	43,674	86	51.1
1996	28,349	63,132	68	694	7,030	12,237	43,328	74	45.6
1997	34,071	62,644	78	698	6,681	13,111	39,765	72	44.7
1998	37,848	64,256	80	710	6,636	13,618	38,901	73	44.4
1999	36,211	63,702	83	770	6,783	13,820	41,534	78	43.9
2000	36,098	66,098	95	650	6,777	10,771	39,185	77	43.5
2001	48,120	68,507	139	713	7,192	14,348	47,645	71	55.2
2002	58,600	83,530	142	728	8,354	14,583	76,570	72	54.2
2003	61,529	95,675	140	730	8,379	13,709	80,587	69	52.7
2004	62,967	99,541	137	705	7,918	13,340	64,140	66	51.1
2005	62,744	107,050	132	714	6,852	13,209	51,519	64	49.1
2006	62,106	125,938	126	734	7,199	12,194	45,852	61	47.1
2007	59,984	95,049	123	678	7,080	12,114	49,304	59	46.0
2008	57,393	91,553	120	674	7,181	11,802	59,009	56	45.7
2009	155,408	79,749	122	716	7,652	17,698	138,157	56	47.0
2010	63,240	126,810	125	790	9,854	13,362	170,647	55	48.1
2011	66,028	97,800	123	701	9,139	12,034	127,500	54	47.1
2012	63,770	85,950	124	747	7,779	12,529	98,976	48	46.0
2013	61,238	67,855	116	716	7,271	11,054	74,843	44	42.4
2014	61,786	83,186	114	733	7,013	11,056	52,120	44	42.7
2015	60,856	123,963	112	733	7,692	10,829	47,858	43	42.2
2016	62,943	94,610	155	802	10,936	11,727	50,641	46	44.5
Source	Table 5.4	Table 3.2	Public Budget Database	Public Budget Database	Table 3.2	5.4 Disc BA	Table 4.1	DOL Budget Data	Public Budget Database

Honor Trust and Treaty Obligations, Raise Spending Caps

REQUESTS

- End sequestration by raising spending caps for FY16 non-defense discretionary funding.
- Pass new appropriations, not a year-long Continuing Resolution (CR), which locks in sequestration.

End sequestration for fiscal year (FY) 2016 by raising the caps on non-defense discretionary funding, which is where most federal tribal programs are funded. The obligations to tribal citizens funded in the federal budget are the result of treaties negotiated and agreements made between Indian tribes and the U.S. in exchange for land and resources, known as the trust responsibility. Of the possible routes for final FY 2016 appropriations, a year-long CR would be the worst scenario for tribes, given that both House and Senate versions of appropriations bills include increases for tribal programs. NCAI urges a long-term budget deal to raise defense as well as non-defense spending caps.

Interior-Environment Appropriations

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

Bureau of Indian Affairs: In the final consideration of FY 2016 appropriations bills, NCAI urges Congress to retain at least the House level of funding for the Bureaus of Indian Affairs (BIA) and Indian Education (BIE). If more resources were made available, NCAI also would urge increases for tribal base funding in programs, such as BIA Social Services, law enforcement, tribal courts, and Natural Resources rights protection implementation.

(Dollars in millions)	FY 2015 Enacted	FY 2016 P.B.	House Bill	Bill vs. Enacted	Bill vs. P.B.	Senate Bill	Sen. vs. Enacted	Sen. vs. P.B.
OIP and CSC	2,429.2	2,660.6	2,505.7	76.4	-154.9	2,509.4	80.2	-151.2
Construction	128.9	188.9	187.6	58.7	-1.4	135.2	6.3	-53.8
Total BIA and BIE	2,601.5	2,924.9	2,766.4	164.9	-158.5	2,693.0	91.5	-231.9
% over FY15		12.4%	6.3%			3.5%		

Context: If the levels in the House bill were enacted, funding for BIA/OST would be slightly less than the FY2010 level, when adjusted for inflation, and less than the FY1979 level. Sequestration in FY 2013 erased many of the gains BIA’s budget made in FY2009 and FY2010, taking the budget back to FY2001 levels and lower than FY1977 in constant dollars.

Notable Differences in Between Bills

NCAI supports the language from the Senate version that establishes an indefinite appropriation for contract support costs, which would better protect against the use of other appropriations to meet shortfalls. As a final solution, NCAI supports reclassifying contract support costs as mandatory.

Federal Recognition Rider: The House Interior Appropriations bill contains a rider that would prevent the completion of the amendments to the Federal Recognition Regulations. The Senate bill does not include the tribal recognition rider. NCAI opposes this rider.

Indian Health Service: For FY 2016, Tribes requested a total funding amount of \$5.2 billion. This request would enable the funding of current services and include program expansion increases in

several key areas including purchased/referred care; hospitals and clinics; mental health and alcohol and substance abuse.

(Dollars in millions)	FY 2015 Enacted	FY 2016 P.B.	House Bill	Bill vs. Enacted	Bill vs. P.B.	Senate Bill	Sen. vs. Enacted	Sen. vs. P.B.
IHS Facilities	460.2	639.7	466.3	6.1	-173.4	521.8	61.6	-117.9
Total IHS, with CSC	4,642.4	5,102.9	4,787.9	145.5	-315.1	4,779.3	136.9	-323.7
IHS % over FY15		9.9%	3.1%			2.9%		

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.

Commerce-Justice-Science

Status: Passed House; approved by Senate Appropriations Committee

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.

INDIAN EDUCATION

KEY POINTS:

- Support tribal provisions included in the Elementary and Secondary Education Act (ESEA) Reauthorizations, S. 1177 and H.R. 5.
- Support S. 1928, the Native Education Support and Training Act to recruit and retain teachers in Indian Country.
- Support S. 1419, the Native Language Immersion Student Achievement Act to encourage language immersion programs for Native students.
- Support funding and programmatic provisions in the reauthorization of the Higher Education Act.

BACKGROUND:

No resource is more important to the continued success and growth of our nation and Indian Country than our children. It is vital that we all work together to strengthen our human capital in all tribal communities across America. The most effective way to do that is to provide a high-quality, culturally-appropriate education that effectively and equally benefits all of our nation's children—including our Native children. Ensuring equal educational opportunities is not simply a matter of fairness, but even more importantly in today's challenging economic climate, it is an essential strategy for creating jobs and securing the nation's future prosperity especially in tribal communities. Education also drives personal advancement and wellness, which in turn improves social welfare and empowers communities—elements that are essential to protecting and advancing tribal sovereignty and maintaining tribes' cultural vitality.

The federal government provides education to Indian students in two ways, through federally funded Bureau of Indian Education (BIE) schools or through education assistance to public schools where Indian students attend. Currently 620,000, or 93 percent, of Indian students attend public schools and approximately 45,000, or 7 percent, attend BIE schools. 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 (TCU's) in the United States serving more than 30,000 Native students. TCUs were created in response to the higher education needs of American Indians and generally serve geographically isolated populations that have no other means accessing education beyond the high school level. TCUs have become increasingly important to educational opportunity for Native American students and are unique institutions that combine personal attention with cultural relevance to encourage American Indians—especially those living on reservations—to overcome the barriers they face to higher education.

As Congress renews its efforts this year in reforming Indian Education it is critical for tribal priorities to be included.

LEGISLATION:

S. 1177 & H.R. 5 - ELEMENTARY AND SECONDARY ACT REAUTHORIZATION

In July, both the House and the Senate passed legislation to reauthorize the Elementary and Secondary Education Act (ESEA). While the House bill – H.R. 5 – preserves the American Indian, Alaska Native and Native Hawaiian Education Title, the Senate bill – S.1177 – requires direct requests from tribal leaders and advocates for greater authority and support in ensuring Native student success.

S.1177 incorporates several tribal provisions, including a proposed new language immersion program in Title VII; stronger consultation requirements between State Education Agencies (SEAs)/Local Education Agencies (LEAs) and tribes; reauthorization of the State Tribal Education Partnership Program (STEP); technical assistance and outreach by the Secretary of Education to assist eligible LEAs/BIE schools with grant applications and improving implementation; and interagency research between the Departments of Interior and Education to identify policy implementation barriers, funding limitations, options for the recruitment and retention of teachers/administrators, and strategies to increase high school graduation rates.

S.1928, THE NATIVE EDUCATION SUPPORT AND TRAINING (NEST) ACT

Last month, Senator Tester introduced the NEST Act which aims to recruit and retain teachers in Indian Country by creating scholarships for Native students seeking education or school administration degrees, federal student loan forgiveness plans and teacher development courses for educators who commit to teaching at a tribal or BIE school.

S.1419, THE NATIVE LANGUAGE IMMERSION STUDENT ACHIEVEMENT ACT

In May, Senator Tester introduced the Native Language Immersion Student Achievement Act to amend Title VII of ESEA by establishing a new grant program to support schools using Native languages as the primary language of instruction and would assist schools in developing and maintaining language immersion programs.

HIGHER EDUCATION ACT (HEA) REAUTHORIZATION

The Higher Education Act authorization 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.

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HEALTHCARE

EXEMPTION FROM THE AFFORDABLE CARE ACT'S EMPLOYER SHARED RESPONSIBILITY MANDATE

KEY POINTS:

- Support S. 1771 and H.R. 3080, the Tribal Employment and Jobs Protection Act.
- The Employer Shared Responsibility Mandate requires tribal employers to offer health insurance coverage to full-time employees and their dependents or pay costly penalties.
- Tribal employers should not be required to pay costly premiums to provide health insurance to American Indian/Alaska Native (AI/AN) employees when the federal government has a trust responsibility to provide health care at no cost to AI/AN and because AI/AN are exempt from the individual mandate.
- Requiring tribal employers to purchase insurance or pay penalties is essentially subsidizing the federal government from its trust responsibility to provide health care to AI/AN.

BACKGROUND:

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 (transition relief is available for employers with 50-99 FT/FTE). 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 AI/AN 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.

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 AI/AN. 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 AI/AN 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% 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 \$2,084 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 \$3,126 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 AI/AN.

LEGISLATION:

In July, Senator Daines (R-MT) and Congresswoman Noem (R-SD) introduced companion bills entitled the "Tribal Employment and Jobs Protection Act" (S. 1771 and H.R. 3080). This legislation amends the Internal Revenue Code to exclude tribal employers from the definition of "applicable large employer" for purposes of the employer health care mandate under the Affordable Care Act. In this legislation a "tribal employers" is defined as (1) any Indian tribal government or subdivision, (2) any tribal organization, or (3) any corporation or partnership if more than 50% of the equity interest of such an entity is owned by an Indian tribal government or tribal organization.

For more information, please contact Legislative Associate, Laura Bird, at lbird@ncai.org.

SUPPORT INDIAN ENERGY LEGISLATION S. 209 AND H.R. 538:

KEY POINTS:

- Traditional and renewable energy production in Indian Country is hindered by outdated and burdensome regulatory processes.
- Tribal energy resources are critical to America's efforts to achieve energy security and independence, reduce greenhouse gases, and will create careers and capital in Indian Country.
- Support S. 209 and H.R. 538 to remove federal barriers to Indian energy production and provide more tribal control and flexibility over their energy resources.

BACKGROUND:

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 elsewhere. Cumbersome bureaucratic processes, disincentives for 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 over 10 years ago, Congress and the Administration must 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.

LEGISLATION:

S. 209 – Indian Tribal Energy Development and Self-Determination Act Amendments of 2015

Introduced by Senator John Barrasso (R-WY), S. 209 seeks 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. S. 209 contains provisions that will: create additional consultation requirements for the Department of the Interior; improve the Tribal Energy Resource Agreements process in the Energy Policy Act of 2005 by recognizing tribal self-determination over energy resources; establish a process for creating and approving Tribal Energy Development Organizations; expand direct access to the Department of Energy's Weatherization Program; support American Indian and Alaska Native biomass demonstration projects; and amend the appraisal and right-of-way approval processes. The Senate Committee on Indian Affairs favorably passed this legislation out of Committee on February 4, 2015 and S. 209 is awaiting action by Senate.

H.R. 538 – The Native American Energy Act of 2015

Congressman Young (R-AK) introduced H.R. 538, his Native American energy legislation, which contains a few changes from the previous iterations, but 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 September 10, 2015, the House Committee on Natural Resources favorably passed this legislation out of Committee and it is ready for consideration by the House.

NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT (NAHASDA)

KEY POINTS:

- Reauthorize the Native American Housing Assistance and Self-Determination Act.

BACKGROUND:

The current authorization of the Native American Housing Assistance and Self-Determination Act of 1996 expired on September 30, 2013. In the 114th Congress, Representative Pearce (D-NM) has introduced the Native American Housing Assistance and Self-Determination Act of 2015, H.R. 360. This legislation is identical to the bill that passed the House in the last Congress. In March, the U.S. House of Representatives passed H.R. 360. Also, in March Senator Barrasso (R-WY) introduced S.710, Native American Housing Assistance and Self-Determination Reauthorization Act of 2015. The Senate Committee on Indian Affairs passed S. 710 in June, and was discharged from the Senate Committee on Housing, Banking and Urban Affairs on August 5, 2015.

Housing is a core necessity for tribal communities. While tribes have made great strides toward improving housing conditions in their communities, the need for adequate, affordable housing for low-income Indian people persists. Native Americans still face some of the worst housing and living conditions in the United States. According to the U.S. Census Bureau's 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 percent lack complete plumbing facilities, 7.5 percent lack kitchen facilities, and 18.9 percent lack telephone service. Close to 30 percent of Indian homes rely on wood for their source of heat.

KEY TRIBAL PRIORITIES:

NAHASDA has become the most significant source of federal housing assistance for low-income Indian families and has succeeded in providing housing throughout Indian country. Passage of NAHASDA in 1996 signaled a shift away from federal control of housing decisions and recognition that tribal governments are best situated to design, develop and manage housing in their own communities.

Both H.R. 360 and S. 710 contain language that would meet the needs of Native Veterans by making tribes eligible to participate in the HUD-Veterans Affairs Supportive Housing Program (HUD-VASH). This program, jointly administered by both HUD and U.S. Department of Veterans Affairs program would address the needs of homeless veterans residing on tribal lands. The current HUD-VASH program does not allow for direct tribal participation. NCAI urges this Congress to reauthorize NAHASDA and include HUD-VASH in this reauthorization.

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FAMILY STABILITY AND KINSHIP CARE ACT OF 2015- S. 1964

KEY POINTS:

- Support the passage of S. 1964, the Family Stability and Kinship Care Act of 2015, which funds preventative services and kinship placements for children at risk of foster placement.
- Contact members of the House of Representatives to introduce and support a companion version of S. 1964.

LEGISLATION:

Last month, Senator Wyden (D-OR) introduced the Family Stability and Kinship Care Act (S. 1964) to reform the federal finance system supporting state and tribal child welfare services.

As the law currently stands, mandatory federal funding is provided to Indian tribes and states almost exclusively after a child has already been placed in foster care. This creates a powerful incentive for tribal and state child welfare systems to place Native children in foster homes outside of their families in order to qualify for these funds. This funding scheme is problematic, as it encourages child welfare systems to forgo efforts to prevent the breakup of the family through restorative services such as parent training, mental health care, and trauma recovery programs.

There has been growing documentation of the failure of the foster system to keep our children healthy, safe, and trauma-free. The Indian Child Welfare Act notes many of these issues, and addresses them in part by mandating placement within kinship and culture before resorting to the trauma of out-of-home foster care. This provision and others like it are what have led Casey Family Programs to proclaim ICWA as the “gold standard of child welfare practice.”

Unfortunately, ICWA’s protections only apply to a certain subset of Native children, and funding is not always guaranteed to provide front-end solutions to keep Native families together. NCAI, NICWA, and a number of other national Indian and child welfare organizations have held meetings to discuss reforms to the current funding scheme and ultimately provided comments to help Senator Wyden shape his final bill.

The final bill includes a number of key provisions designed to keep at-risk children within kinship placements and to provide greater preventative and support services to the families of those children. As drafted, S. 1964 gives tribes greater flexibility and greater resources to create culturally-informed solutions for their families and greater resources to do so.

S. 1964 is a great opportunity for tribal child welfare systems to strengthen efforts to fully implement ICWA as intended, by keeping Native children in kinship and community homes. NCAI fully supports passage of the Family Stability and Kinship Care Act as a necessary piece of legislation that will improve child welfare systems for Native children, and nationwide.

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SUPPORT S. 438- THE IRRIGATE ACT TO FUND NECESSARY MAINTENANCE ON INDIAN WATER PROJECTS

KEY POINTS:

- Many Indian irrigation and water projects in the West are experiencing severe funding shortages forcing necessary maintenance to be deferred, affecting access to potable water and economic development.
- The United States must live up to its trust responsibility and provide the necessary funding and support for Indian water projects.
- Support S. 438 which creates a Reclamation Rural Water Construction and Settlement Implementation Fund to support 16 Indian irrigation projects in the West.

BACKGROUND:

In the late 1800s and early 1900s, as part of its trust responsibility, the federal government constructed a number of Indian irrigation projects to deliver water to tribes and individual Indians engaged in agriculture. Despite its ongoing responsibility to administer and maintain these Indian irrigation projects, the Bureau of Indian Affairs has yet to ensure that regular and routine maintenance of is performed on these projects, resulting in a deterioration of tribal and individual Indian trust resources. Further, a 2006 study by the federal Government Accountability Office estimated that the total cost of backlogged and deferred maintenance required to bring 16 Indian irrigation projects in the western United States back to functional condition equaled \$850 million. The lack of funding has a human cost as well, as a number of Indian tribes have incomplete or unbuilt drinking water projects to serve their people, leaving residents of these reservations to suffer due to the lack of potable water. Limited access to water also stymies economic develop and growth.

Congress must pass legislation to include a funding mechanism for Indian irrigation and water delivery projects as well as the implementation of Indian water rights settlements. Taking no action will continue to allow Indian irrigation projects to deteriorate. The costs to the United States of their unmet maintenance, repair and replacement needs will continue to increase, tribes and tribal members will continue to suffer from poor or non-existent delivery of water, and settlements of Indian water rights will continue to languish.

LEGISLATION:

S. 438 – THE 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. This bill creates a fund at the U.S. Department of Treasury called the “Reclamation Rural Water Construction and Settlement Implementation Fund” funded in the amount of \$150 million annually. 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. S. 438 is ready for Senate floor consideration.

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JUVENILE JUSTICE IN INDIAN COUNTRY

KEY POINTS:

- Support Reauthorization of the Juvenile Justice and Delinquency Prevention Act.
- Support additional tribal provisions that acknowledge the unique nature of tribal justice systems, including a mandatory 10% tribal set-aside within reauthorization legislation.

BACKGROUND:

Native youth face unique issues with the juvenile justice system. Native youth are almost twice as likely to be sent to court for status offenses than their white counterparts. Once these youth engage with justice system, they are far more likely to be incarcerated than to be placed on probation for later violations. At present, the majority of youth in federal detention centers are American Indian/Alaska Native. Native youth also make up a disproportionate number of the population in state juvenile justice systems, when compared with their non-Indian counterparts. Due to geographic and economic barriers, Native youth within the juvenile justice system frequently lose contact with their families and traditions, which increases the likelihood that these youth offenders will re-offend when released.

Tribal communities tend to be underequipped to handle the issues facing their youth populations as well. Many tribal communities lack access to funding for mental health and other support services to offset the impacts of these conditions. When faced with these realities, tribes are often unable to participate in ensuring the health and welfare of their youth populations. While tribes are typically better situated to offer culturally appropriate alternatives to incarceration, many tribes lack the ability to financially support the infrastructure needed to deter and rehabilitate juvenile offenders.

Key Tribal Priorities for Juvenile Justice Reauthorization

Both the House and the Senate have introduced bills reauthorizing the Juvenile Justice and Delinquency Prevention Act (S. 1169 and H.R. 2728). In addition to broadening the pool of Indian tribes covered under the Act, the proposed legislation improves juvenile justice systems by removing youth from adult jails; keeping non-violent youth offenders from confinement; separating youth and adult offenders in lock-ups or jail; and, reducing the disproportionate rates of minority involvement with the juvenile justice system. NCAI supports the reauthorization of the JJDPDA, but would urge inclusion of additional tribal provisions.

In reauthorizing the JJDPDA, it is important that tribes are not left behind. Under current law and the proposed legislation, tribes are treated as local governments that must look to states as the party responsible for allocating and administering juvenile justice funds. This method of allocation has not been favorable to tribes. It is therefore important that tribes receive a mandatory 10% set-aside under the reauthorization to support juvenile justice infrastructures unique to tribal peoples. The immediate costs of building up Native juvenile justice systems with the tools needed to implement culturally sensitive juvenile justice solutions pale in comparison with the long term costs of incarcerating habitual juvenile offenders into adulthood. Congress must take this into account when considering any JJDPDA reauthorization bill.

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LAND IN TRUST

KEY POINTS:

- Pass legislation that reaffirms the Secretary's authority to take lands into trust for all tribes and affirms the trust status of lands already in trust.

BACKGROUND:

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.

With over 15 federal lawsuits currently pending, the *Carcieri* decision has 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.

Following the Supreme Court's decision in *Carcieri v. Salazar* in 2009, tribes have been calling on Congress to amend the Indian Reorganization Act to reaffirm the Secretary of the Interior's authority to take lands into trust for all tribes; and affirm the status of current lands held in trust for tribes and to ensure that all tribes are treated equally under the Indian Reorganization Act.

LEGISLATION:

In July, Senator Barrasso introduced S. 1879, the Interior Improve 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 incentivizes agreements between tribes and counties that take into account mitigation factors of lands taken in trust. The legislation makes the land-in-trust process more transparent by placing applications on the DOI website 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 complements other legislation that has been introduced to address concerns raised by tribes since the 2009 Supreme Court decision in *Carciari v. Salazar*. 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 in accordance with the Indian Reorganization Act, 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.

For more information please contact John Dossett, NCAI General Counsel, at jdossett@ncai.org or Denise Desiderio, Policy Director, at d-desiderio@ncai.org 202-466-7767.

TRIBAL SELF-GOVERNANCE: AMEND TITLE IV OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

KEY POINTS:

- The Indian Self-Determination and Education Assistance Act (ISDEAA) is a vital mechanism allowing tribes to build capacity for governmental activities, but its function at the Department of the Interior must be improved.
- Support S. 286 – the Department of the Interior Tribal Self-Governance Act of 2015 to amend Title IV of ISDEAA
- Amending Title IV of ISDEAA makes it consistent with Title VI of the Act, the self-governance program for the Department of Health and Human Services.
- Identify champions and supporters in the House of Representatives to introduce and move forward companion legislation to S. 286.

BACKGROUND:

Amending Title IV of the Indian Self-Determination and Education Assistance Act (ISDEAA) is a top legislative priority for Indian Country. Over the past forty years, the ISDEAA has been one of the most successful mechanisms allowing tribes to develop the capacity for government-building activities. However, Title IV of the ISDEAA, the Self-Governance program within the Department of the Interior (DOI), has serious gaps and problems. Congress working with tribes must continue to advance the vision of the ISDEAA by working to amend Title IV of the ISDEAA to create consistency between Title IV Self-Governance in the DOI and Title V Self-Governance in the Department of Health and Human Services (HHS) and generate administrative efficiencies for self-governance tribes.

LEGISLATION:

S. 286 – DEPARTMENT OF THE INTERIOR TRIBAL SELF-GOVERNANCE ACT OF 2015

On January 28, 2015, Senate Committee on Indian Affairs (SCIA) Chairman Barrasso (R-WY) introduced S. 286 – the Department of the Interior Tribal Self-Governance Act of 2015. S. 286 was referred to the SCIA and is cosponsored by Senators Tester (D-MT), Murkowski (R-AK), Crapo (R-ID), Schatz (D-HI) and Franken (D-MN). The Congressional Budget Office has determined that S. 286 would have no significant effect on the federal budget over the 2015-2020 fiscal years and would not affect direct spending or revenues.

On February 4, 2015, SCIA held a mark-up and S. 286 was ordered to be reported without amendment favorably. At the mark-up, Senator McCain filed four amendments to S. 286 but all were withdrawn and were not offered during the mark up. Chairman Barrasso stated that he would continue to work to address the intent of these amendments with Senator McCain, Indian tribes, and the Department of Health and Human Services Inspector General. The amendments related to the Health and Human Services Office of Inspector Generator (HHS-OIG) report, “*Alert to Tribes on use of Indian Self-Determination and Education Assistance Act (ISDEAA) and Third Party Funds*”. This report raised concerns over how certain contracting dollars are being used and audit questions.

On July 7, 2015, S. 286 passed the Senate by Unanimous Consent and was sent to the House next for consideration. The Title IV Tribal Task Force has met with members in the House of Representatives; however, a primary sponsor has not yet been identified to introduce the Title IV amendments.

After the bill was passed, the Association of Fish and Wildlife Agencies (AFWA) raised concerns about the bill with Senate and House Members and staff. The primary concerns identified relate to the bill’s purported impact on non-BIA programs. The Task Force is helping SCIA staff and others address AFWA’s concerns and working towards having S. 286 passed in the House.

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TRIBAL TAX INITIATIVES

The last national tax reform occurred just under 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 authority to provide government revenue for tribal programs independent of federal appropriations and encourage economic growth on tribal lands.

Last year, the 113th Congress enacted the Tribal General Welfare Exclusion Act of 2014 in a demonstration of collaboration between Native nations and Congress. The Act responded to the taxation of certain governmental services provided to, or on behalf of, the tribe or its members. With the passage of the Act, Indian general welfare services provided by tribal government programs are no longer subject to taxation as gross income.

The Tribal General Welfare Exclusion Act is just the beginning of a larger effort to overhaul tribal taxation infrastructure and bolster tribal economies. Reliable funding sources have been few and far between for every tribal government service for decades. Congress must continue to actively engage with Native nations to achieve tribal tax reform in a comprehensive manner.

Tax Initiatives to Restore Tribal Economies and Support Tribal Communities

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, 2014, and should be reenacted as soon as possible and on a permanent basis.

Achieve tax parity for Tribal Governments. Members of Congress and Indian tribes have identified a significant number of provisions where tribes are unable to utilize the Tax Code in the same manner as state and local governments. NCAI strongly urges parity in these areas:

- *Tribal government tax-exempt bonds.* Currently, tribes may only use tax-exempt bonds for "essential government functions." The IRS has interpreted this in a way to exclude economic development as a governmental function, while state and local governments frequently use tax exempt financing for revitalization projects. This unnecessarily prevents tribes from securing the funding needed to revitalize their communities.
- *Tribal government pension plans.* Tribal governments currently must provide both government and private ERISA pension plans to their employees. This largely depends on whether the employee works for the tribal government or for a tribal enterprise. 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.* Tribally-created foundations and charities do not enjoy the same tax-exempt status that state-created foundations and charities enjoy. This creates an uncertain atmosphere for potential benefactors seeking to maintain their tax-exempt status. In order for tribal foundations and charities to thrive, it is necessary for benefactors to feel unencumbered to make contributions without potential tax penalties.

- *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, the tax code should be amended to allow tribal child support enforcement agencies to enforce orders for support through the authority to withhold past due child support payment from the federal income tax returns of parents with past due obligations.
- *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.
- *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.
- *Tax credits granted to doctors employed by Indian Health Service facilities.* Tax credits are available to doctors employed in other areas of the public sector, but are 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.

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 included tribes within last year’s version of S. 743, and NCAI is optimistic the legislation will be considered again this year.

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.

For additional information please contact John Dossett, General Counsel, or Christina Snider, Staff Attorney, at 202.466.7767 or john_dossett@ncai.org or csnider@ncai.org

TRIBAL LABOR SOVEREIGNTY ACT

KEY POINTS:

- Support H.R. 511 & S. 248 – the Tribal Labor Sovereignty Act.
- Ensure that Tribal governments are tribal governments are treated as other governments for purposes of the National Labor Relations Act.

BACKGROUND:

The NLRA was enacted in 1935 to address growing upheavals in private industry. The Act was never designed to regulate government employment, because governments owe their first duty to their citizens. Governments were therefore expressly exempted from the Act. Although the NLRA did not specifically list out each and every type of exempted government, the Board understood Congress's plain intent and consistently interpreted the government exemption to include tribal governments. But in 2004 the NLRB did an about-face and, without either consulting tribes or writing new regulations, the Board 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, rather than to cover them. Overnight, tribal governments became the only governments out of 90,000 state and local governments to be covered by the NLRA.

Congress's wisdom in exempting governments from the Act is plain. Applying a private sector labor regime of forced collective bargaining over all conditions of employment, under the threat of protected strikes, is a formula for bringing government to its knees. A government would have to choose between surrendering its very right to enact laws, or permit government itself be shut down by work stoppages. This is particularly problematic for tribal governments, whose fragile economic activities are as critical to their success as governments and the resulting 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. Our police and fire departments, our schools and hospitals, our courts, and our tribal legislatures must stay open. And to do so depends upon uninterrupted revenue-generating activities operated by tribal government employees. The Tribes' exemption from the NLRA is crucial to their very existence as sovereign tribal governments.

The Tribal Labor Sovereignty Act builds upon a principle that has been amply proven by Indian tribes across the country: when tribal sovereignty is respected and acknowledged, successful governments follow. The legislation will address the NLRB's unnecessary and severely damaging overreach into the sovereign jurisdiction of tribal governments. By amending the NLRA to expressly treat tribal government employers the same as state and local government employers, the law will provide needed certainty to ensure that tribal ordinances relating to labor practices will be respected, while also assuring parity across all the Nation's governments.

LEGISLATION:

Tribal leaders from across America urge support for the Tribal Labor Sovereignty Act pending before Congress, H.R. 511 & S. 248. Both the Senate and House bills have been successfully reported out of committee in both the Senate and the House, and we anticipate floor votes in the near future. This proposed legislation is an integral part of Congress's efforts to ensure that the United States continues to respect the sovereignty of tribal governments. It does so by explicitly adding "tribes" to the definition of governmental entities that are exempt from the National Labor Relations Act.

For more information please contact John Dossett, NCAI General Counsel, at jdossett@ncai.org or 202-466-7767.

TRIBAL TRANSPORTATION

KEY POINTS:

- Support the principals of the Tribal Transportation Unity Act within the next transportation reauthorization to continue the development of tribal transportation programs.
- Support adequate funding for tribal transportation programs including: Bureau of Indian Affairs Road Maintenance; Tribal Transportation Program, and Public Transportation on Indian Reservations (Tribal Transit Grant Program)
- Support H.R.1068, Tribal Transportation Self-Governance Act of 2015, would expand self-governance programs at the Department of Transportation.

BACKGROUND:

Surface transportation in Indian Country involves thousands of miles of roads, bridges, and highways. According to the latest National Tribal Transportation Facility Inventory, 23 USC 202 (b)(1), there are over approximately 160,000 miles of roads and trails in Indian Country owned by the BIA, Indian tribes, States and Counties. However, these miles of roadways are still among the most underdeveloped and unsafe road networks in the nation, even though such routes are the primary means of access to American Indian and Alaska Native communities by tribal and non-Indian residents and visitors alike. Of the 27,500 miles of roads and trails owned by the BIA, only 7,100 miles are paved and 20,400 miles are graveled, earth or primitive. Indian tribes own 13,650 miles of roads and trails, of which only 1,000 miles are paved and 12,650 miles are gravel, earth or primitive.

LEGISLATION:

In July, Congress passed and President signed, H.R. 3236, Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (P.L. 114-41), extending the funding authority for the current transportation authorization until October 29, 2015. In addition, in July the Senate passed H.R. 22, 'Developing a Reliable and Innovative Vision for the Economy Act (DRIVE Act), the legislation includes the following: increase fund levels for Tribal Transportation Program with \$10 million step increases from \$465 million for fiscal year 2016 to \$515 million for fiscal year 2021; provision for data collection of tribal transportation programs; and tribal inclusion for national significant projects program.

Key Tribal Priorities for the Transportation Reauthorization

Transportation infrastructure development is interconnected to economic development, creating jobs, and improving living conditions and safety for individuals and families in Indian Country. Construction of transportation, public transit, highway safety and maintenance programs are crucial to providing a safe and reliable transportation network for residents of tribal communities to travel to places of work, schools, healthcare facilities, and retail establishments. It is important for the next transportation reauthorization to recognize tribal self-determination, and provide adequate funding for tribal governments to provide safe and adequate transportation system which serves our tribal communities but also the other millions of Americans who travel through our tribal lands and tribal communities every day.

H.R. 1068 – The Tribal Transportation Self-Governance Act of 2015

In February of this year, Congressman Peter A. DeFazio (D-OR) introduced H.R. 1068, the Tribal Transportation Self-Governance Act of 2015. This bill would extend self-governance programs within the U.S. Department of Transportation. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, (SAFETEA-LU), P.L. 109-59, authorized the Secretary of U.S. Department of Transportation (DOT) to have agreements directly with the Federal Highway Administration (FHWA) and Bureau of Indian Affairs (BIA) (23 U.S.C. 202 (a)). Prior to SAFETEA-LU, tribal governments had only BIA to administer their tribal transportation programs. Now, tribal governments are able to work directly with FHWA or BIA to administer the Tribal Transportation Program.

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MODERNIZE THE FEDERAL TRUST ASSET MANAGEMENT SYSTEM

KEY POINTS:

- Federal statutes and regulations governing the management of trust systems are antiquated and do not reflect the modern trust relationship between 21st Century tribes and the federal government.
- Tribes are in the best position to determine how their trust assets should be managed and protected.
- Support S. 383 and H.R. 383 to continue the modernization of the trust asset management system.

BACKGROUND:

Many of the federal statutes and regulations governing the management of trust systems were adopted several decades ago—some over 100 years ago—and have not kept up with the modern trust relationship between tribes and the federal government. 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. 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. 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.

LEGISLATION:

S. 383 & H.R. 812 – THE INDIAN TRUST ASSET REFORM ACT

Senator Crapo (R-ID) and Representative Simpson (R-ID) introduced 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.

The House Committee on Natural Resources Subcommittee on Indian, Insular, and Alaska Native Affairs held a hearing to discuss H.R. 812 where 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. 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.

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PROVIDING SERVICES & JUSTICE TO NATIVE VICTIMS OF CRIME

KEY POINTS:

- Last year Congress disbursed \$2.3 billion, the highest amount ever, from the Crime Victims Fund (CVF), which is the nation's primary funding source for crime victim services programs and compensation.
- Indian tribes, however, continue to be largely left out of the programs funded by the CVF, even though tribal communities experience the highest crime victimization rates in the country.
- Congress must take action to ensure crime victims in tribal communities are not left out of the life-saving services funded by the CVF again this year and in the future.
 - Support the language in the Senate CJS bill that would direct \$52 million from the CVF to tribal communities this year.
 - Support the SURVIVE Act, S. 1704, which would create a stable 5% allocation of CVF disbursements for a grant program for tribal governments to provide crime victim services for the next 10 years.

BACKGROUND:

American Indian and Alaska Natives experience the highest crime victimization rates in the country.

- Native people are 2.5 times more likely to experience violent crime than other Americans.
- Approximately 34% of American Indian and Alaska Native women are raped and 61% are assaulted in their lifetimes.
- Due to exposure to violence, rates of post-traumatic stress disorder among Native children match rates among Iraq and Afghanistan war veterans.

Despite the devastating impact of criminal victimization in tribal communities, Indian tribes have largely been left out of the Crime Victims Fund, which is the federal government's principle means of providing resources for crime victims.

Congress created the CVF in 1984 based on the idea that money that 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 over \$13 billion. There has been significant pressure on Congress to make more of this money available for crime victims, and Congress significantly increased the distributions for FY 2015 to \$2.3 billion. Distributions are expected to be similarly high in FY 2016. The House CJS bill sets the level at \$2.7 billion, while the Senate CJS bill sets it at \$2.6 billion.

Unlike state and territorial governments, who receive an annual formula distribution from the CVF, Indian tribes are only able to access CVF funds via pass-through grants from the states or by competing for very limited resources administered by the Department of Justice. According to DOJ, from 2010–2014, state governments passed through 0.5% of available funds to programs serving tribal victims—less than \$2.5 million annually nationwide. This leaves a significant unmet need in most tribal communities. In 2013—the year with the highest number of state subgrants to date—more than 60% of states with Indian tribes did not make any subgrants. Of the 16 states that did pass through money to tribal victim service programs, all but one passed through less than 5% of the states’ available VOCA funds.

In July of this year, the Senate Committee on Indian Affairs unanimously approved S. 1704, the Securing Urgent Resources Vital to Indian Victim Empowerment Act, or “SURVIVE Act.” The bill would create a new grant program at the Bureau of Indian Affairs for crime victims services. Funding for the program would come from a 5% allocation from the CVF for the next 10 years.¹ The SURVIVE Act is unlikely to pass in time to make a difference for FY 2016 funding. Senate appropriators, however, have included language in the Senate CJS appropriations bill that would direct \$52 million from the CVF to tribal governments. The House CJS bill did not include an allocation for tribal governments, and NCAI has asked appropriators to adopt the Senate language in conference. We encourage Members of Congress to support efforts to include Indian tribes in the CVF through authorizing language like the SURVIVE Act and to support appropriations language that ensures tribal victims are not left behind again this year.

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

¹ NCAI has sent a letter to Senators Barrasso and Tester requesting that the new program be made permanent rather than expiring after 10 years.

PROTECTING VOTING RIGHTS FOR NATIVE AMERICANS

KEY POINTS:

- Support S. 1912 and S. 1659/H.R. 2867, which seek to remove long-standing barriers to voting for Native Americans.
- Ask the Senate Committee on Indian Affairs to hold a hearing on S. 1912, the Native American Voting Rights Act.

BACKGROUND:

Native Americans were the last to legally obtain the right to vote in the United States, and Native voters continue to face persistent barriers in exercising that right. Native voters often live far from established polling places and 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 white voters.

American Indian and Alaska Native voters frequently encounter five issues that Congress should address:

- Access to the Polls: The most common concern raised by Native voters is distance to election-day and early voting polling locations.
- Voter Intimidation: Every election cycle there are reports of Native voters being harassed or intimidated at the polls.
- Language Access: Many Native voters speak their indigenous language and require language assistance to vote. Some jurisdictions deny language assistance to Native voters on the grounds that the language was historically unwritten even when a written form of the language currently exists.
- Voting Rights Enforcement: There is a shortage of resources for litigation in tribal communities, and as a result, the Voting Rights Act has not been vigorously enforced in Indian Country.
- 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 for voting.

LEGISLATION:

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.

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



Trends in Selected Tribal Programs in the Federal Budget, FY 1977-FY2016



Executive Summary

Tribal leaders at national conventions, federal budget consultations, and in meetings with federal officials have requested up-to-date analyses of trends in federal spending on programs fulfilling the trust obligation to Indian tribes.¹ As governments, tribes must deliver a wide range of critical services to their citizens, such as education, workforce development, and first-responder and public safety services. As a consequence of federal actions and sequestration, Indian tribes across the nation have been forced to spend large amounts of scarce tribal funds to support the services that should have been provided or paid for by the United States. To improve understanding of the core programs for tribal governments/tribal entities, this paper examines large-scale trends in funding for the major Indian programs over time compared to broadly similar aggregates in funding for the entire US population.

Tribal Base Funding

This paper summarizes trends for some of the core tribal government related spending areas from FY 1977-2016 and FY 2000-2016, including Bureau of Indian Affairs (BIA), Indian Health Service (IHS), Indian housing, Indian education, and employment and training. The programs examined comprise about 65 percent of the funding identified in the Native American cross cut, excluding the Special Nutrition Assistance Program (SNAP), IHS reimbursements, and education loans/indirect education support. Moreover, this analysis compares trends rather than unmet needs, gaps in services, or impact, which would employ program evaluation methods for each agency and program, a much longer analysis and out of this report's scope. The trends account for inflation because deflated values provide a more realistic view of budget trends.

Overall Budget Trends

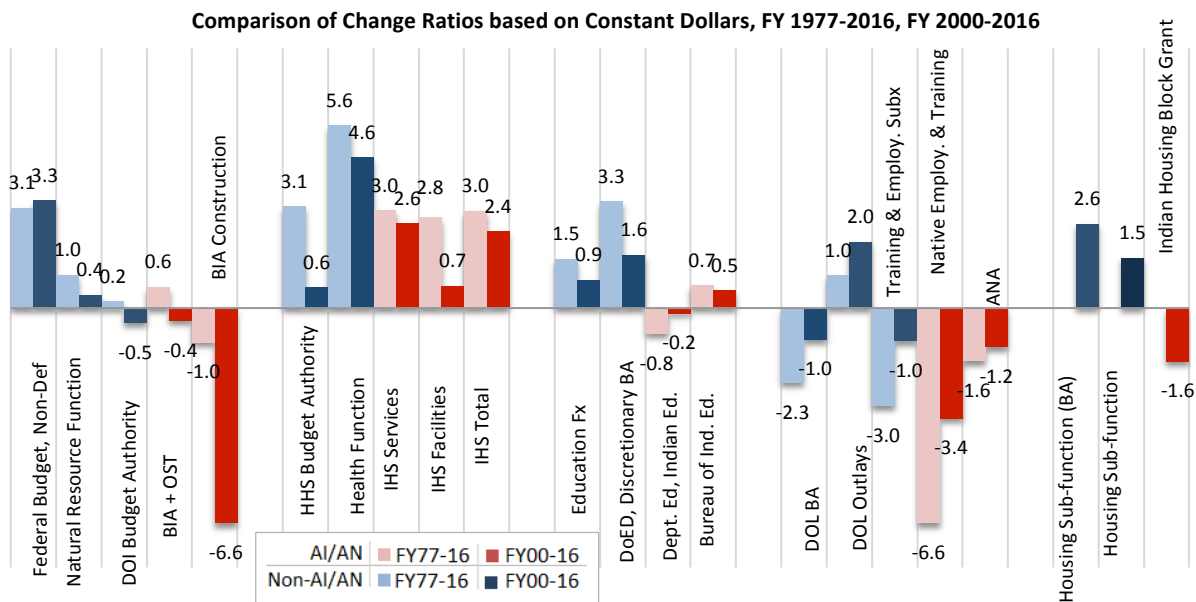
The comparison of Indian-related spending in constant dollars to comparable budget items across the federal budget shows that most Indian related spending areas continue to lag behind their non-Indian counterparts. This trend generally holds true over the FY1977 to FY2016 time period as well as over the FY2000 to FY 2016 time period. Among the Indian-related budget items, the Indian Health Service increased with the highest change ratio. In recent years, the IHS budget and BIA budgets have received increased investments compared to the discretionary budget authority for the departments in which they are housed (DOI and HHS, respectively). However, BIA's budget did not increase proportionally as much as the Natural Resource budget function. Similarly, the change ratio for the Health Budget function, which includes both discretionary and mandatory funding, was higher than for IHS, which is a discretionary program.

Cross-Cutting Recommendations

- Across each budget area, NCAI recommends that Indian-related spending should receive at least equitable increases as the comparable spending for the general population.

For more detail on definitions and budget trends in each category, see the corresponding pages in the report.

¹ See NCAI Resolution ATL-14-084: Recommendations for Addressing the State of Emergency in Federal Underfunding of the Trust



Bureau of Indian Affairs and Office of Special Trustee (See page 10)

- The BIA/OST change ratio and BIA alone ratio for both periods are slightly higher than the overall DOI change ratio, however, not as high as the overall Natural Resource budget function.
- Sequestration erased many of the gains BIA’s budget made in FY2009 and FY2010, taking the budget back to FY2001 levels and lower than FY1977 in constant dollars.
- If the FY 2016 President’s budget level were enacted, funding for BIA/OST would be at about the FY2010 level, when adjusted for inflation, and less than FY1979.

Health (See page 12)

- The health budget sub-function 551 had a much higher change ratio than the IHS over both time periods examined. The HHS outlays change ratio is also higher than the IHS change ratio.

Education (See page 14)

- Increases should support stable base funding for Indian education.
- Of any education spending category examined, Indian Education at the Department of Education (DoED) declined most steeply from FY1977 to FY2016.
- As a percent of the overall DoED discretionary budget, Indian Education reached a high point at 0.7 percent in FY1982, but then steadily declined to about 0.2 percent in FY2015.

Economic Development and Employment and Training (See page 16)

- Over both time periods, the Native American Employment and Training program declined more steeply than the overall DOL discretionary budget.
- Of any spending category in this section, the Native American Employment and Training program declined the most steeply.
- The Administration for Native Americans did not increase at the same rate as the HHS discretionary budget.

Housing (See page 18)

- The Indian Housing Block Grant (IHBG) had a lower change ratio compared to the housing spending categories for the general US population.
- The IHBG spending level decreased as a percentage of the overall discretionary budget authority for HUD from FY2000 to FY2016. In FY2000, IHBG comprised 2.9 percent of HUD’s discretionary budget, but declined to 1.2 percent in FY2006, and in FY2015, the most recent enacted appropriations bill, comprised 1.9 percent of HUD’s discretionary budget.

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Trends in Selected Tribal Programs in the Federal Budget, FY 1977-FY2016

Introduction

Tribal leaders at national conventions, federal budget consultations, and in meetings with federal officials have requested up-to-date analyses of trends in federal spending on programs fulfilling the trust obligation to Indian tribes.² Effective tribal governments that can meet the essential needs of their citizens require the fulfillment of the federal trust responsibility and respect for tribal self-determination. This paper reports on spending for tribes based on their political status, as opposed to race or income status, and on spending that meets the federal trust responsibility.

Trust Responsibility: Indian tribes ceded millions of acres of land that made the United States what it is today, and in return tribes have the right of continued self-government and the right to exist as distinct peoples on their own land. For its part, the United States has assumed a trust responsibility to protect these rights. Part of this trust responsibility includes ensuring basic governmental services in Indian Country, funding for which is appropriated in the discretionary portion of the federal budget. As governments, tribes must deliver a wide range of critical services to their citizens, such as education, workforce development, and first-responder and public safety services. Funding decisions by the Administration and Congress are an expression of our nation's policy priorities, and the federal budget for tribal governmental services reflects the extent to which the United States honors its obligations to Indian people. As a consequence of federal actions and sequestration, Indian tribes across the nation have been forced to spend large amounts of scarce tribal funds to support the services that should have been provided or paid for by the United States. Thus, this paper reports on federal dollars that meet trust obligations and promote tribal governance.

Trends in Core Tribal Governmental Services: Tribal leaders as part of the Tribal Interior Budget Council have requested more information and detail on the Native American cross cut³ of federal funding for Indian tribes and their citizens.⁴ Specifically, tribal representatives identified the need for data on the most highly accessed and important programs that tribes depend on as "base funding," the number of tribes accessing the programs and funding opportunities, whether tribes must compete with other entities such as state and local governments, whether the funding passes through states, whether a match is required, and whether indirect costs are allowed. Other questions include why tribes have challenges accessing new funding opportunities and what action agencies could take to address those challenges. To improve understanding of the core programs for tribal governments/tribal entities, this paper examines large-scale trends in funding for the major Indian programs over time compared to broadly similar aggregates in funding for the entire US population.

Figure 1 shows the amounts enacted in fiscal year (FY) 2015 for programs serving tribes and AI/AN people, according to Office and Management and Budget cross cut data, in which spending on tribal and AI/AN people in FY 2015 totaled over \$19 billion. However, some of the programs included only provide indirect support for American Indian/Alaska Native (AI/AN) individuals eligible according to set criteria instead of for tribes, such as the Supplemental Nutrition Assistance Program (more than \$1 billion), a mandatory nutrition program administered by states that assists low-income households, or Higher Education Act

² See NCAI Resolution ATL-14-084: Recommendations for Addressing the State of Emergency in Federal Underfunding of the Trust Responsibility

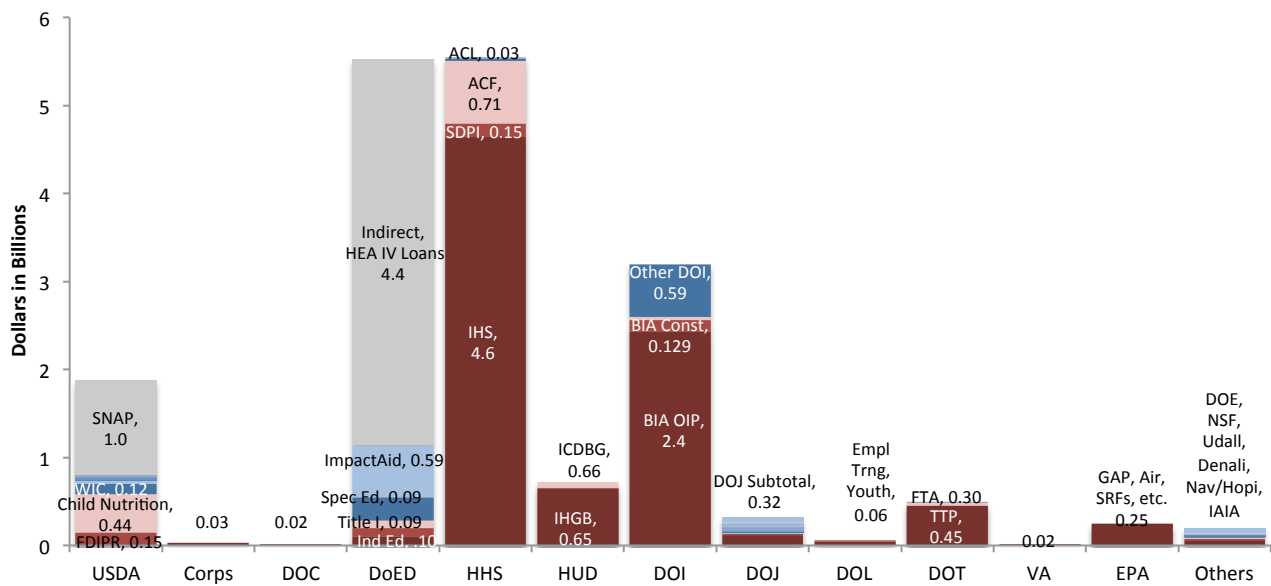
³ Native American Crosscut, FY 2016 Federal Funding for Programs Serving Tribes and Native American Communities, accessed at <http://www.doi.gov/budget/budget-data.cfm>

⁴ Tribal Interior Budget Council. (2015). Action Tracking Document, Motion passed on May 22, 2014 for a subgroup to work with OMB on Crosscut Document

Title IV student aid loans and other indirect education support (totaling more than \$4 billion), both gray in Figure 1. Although other programs provide benefits to Native people or children, such as Impact Aid and Special Education, many tribes or tribal entities may not administer them.

This paper summarizes trends for some of the core tribal government related spending areas from FY 1977-2016 and FY 2000-2016, including Bureau of Indian Affairs (BIA), Indian Health Service (IHS), Indian housing, Indian education, and employment and training. Other departments provide recurring tribal funding for transportation, environmental protection, nutrition, and justice, but historical data for comparison may not be available. The programs examined here make up about 65 percent of the funding identified in the Native American cross cut, excluding SNAP, IHS reimbursements, and HEA Title IV loans/indirect education support. Lastly, this analysis compares trends rather than unmet needs, gaps in services, or impact, which would employ program evaluation methods for each agency and program, a much longer analysis and out of this report’s scope.

Figure 1: FY15 Enacted Amounts for Programs Serving Tribes and Native American Communities



Data source: NCAI analysis of the Native American Crosscut, FY 2016 Federal Funding for Programs Serving Tribes and Native American Communities, included as an appendix to this paper.

Key for Federal Departments Ag: Agriculture, Corps: Army Corps of Engineers, DOC: Commerce, Ed: Education, HHS: Health and Human Services, HUD: Housing and Urban Development, DOI: Interior, DOJ: Justice, DOL: Labor, DOT: Transportation, VA: Veterans Affairs, EPA: Environmental Protection Agency, SNAP: Supplemental Nutrition Assistance Program, WIC: Special Supplemental Nutrition Program for Women, Infants, and Children, FDIPR: Food Distribution Program on Indian Reservations, HEA: Higher Education Act, ACL: Administration for Community Living, ACF: Administration for Children and Families, SDPI: Special Diabetes Program for Indians, IHGB: Indian Housing Block Grant, ICDBG: Indian Community Development Block Grant, OIP: Operation of Indian Programs, FTA: Federal Transit Administration, TTP: Tribal Transportation Program, GAP: General Assistance Program, SRFs: State Revolving Funds, DOE: Department of Energy, Others include independent agencies with small amounts of tribal funding, such as Denali Commission, National Science Foundation, Smithsonian, and the Institute for American Indian Arts

Methodology

Each budget area in Table 1 and 2 includes: 1) the average level of spending in each year over time, 2) the annual change for each area, 3) the ratio of annual change to the average spending level, and 4) how consistent the change is. The analysis includes trends in current dollars as well as inflation-adjusted dollars, which affords a better assessment of real change in spending. The average or mean level of spending during the periods FY 1977-2016 and FY 2000-2016 (all enacted levels except FY 2016, which is analyzed as proposed in the President’s Budget) was calculated by dividing the spending over the entire time period by the number of years in that time period.

Annual change and trend consistency over the same period were determined by a time-series linear regression analysis. The annual change is the “slope” of the line – the regression coefficient.

The annual change shows how much the spending on a particular budget item changes for every year that passes. Trend consistency is the coefficient of determination, or r^2 , generated by a regression analysis. If the r^2 is closer to 1, then the trend is very consistent. If the r^2 is closer to 0, then the trend is very irregular. The change ratio is the annual change divided by the average level of spending to control for relative sizes of various budgets. Data sources for this paper include FY 2016 Historical Tables of the Budget of the US Government, the Congressional Research Service memorandum, “Indian-Related Federal Spending Trends, FY 1975-FY2001,” and relevant appropriations bills. Table 1 displays trends in dollars before inflation adjustment. Table 2 and the remaining analysis display inflation adjusted dollars. The table highlights agencies serving tribes in light gray.

Table 1: Trends in Selected Programs, Functions in the Federal Budget in Nominal Dollars, FY1977-FY2016

Dollar figures in millions		Average Level (A)	Annual Change (B)	Change Ratio (B/A)	(r^2) Trend Consistency
Overall	Total Federal Non-Defense Budget ⁵	1,330,452.2	70,523.0	5.30	0.93
	Natural Resources Function ⁶	25,190.5	915.86	3.64	0.87
	DOI Discretionary Budget Authority ⁷	8,270.6	244.23	2.95	0.92
	BIA and OST ⁷	1,834.5	59.9	3.26	0.94
	BIA ⁸	1,761.9	53.9	3.06	0.94
	BIA construction ⁷	189.9	3.5	1.83	0.13
Health	HHS Discretionary Budget Authority ⁶	44,152.6	2,288.0	5.18	0.90
	Health Function Budget Authority ⁹	151,672.8	10,797.0	7.12	0.89
	IHS ⁷	1,970.5	101.0	5.12	0.97
	IHS Facilities ⁷	267.5	13.4	5.00	0.77
	IHS, total ⁷	2,238.0	114.3	5.11	0.97
Edu.	DoED, Discretionary Budget Authority ¹⁰	37,308.8	2,030.8	5.44	0.68
	Education Function ¹¹	59,886.3	2,475.3	4.13	0.82
	DoEd, Indian Education ⁷	92.4	2.1	2.29	0.71
	DOI, Indian Education ⁷	510.4	17.0	3.33	0.93
Econ. Dev.	Training and Employment Sub-Function ¹⁰	7,249	31.0	0.43	0.05
	DOL Discretionary B.A. ⁹	10,716.4	110.4	1.03	0.29
	DOL Outlays ¹²	48,838.6	1,882.6	3.85	0.42
	Indian & Nat. Am. Training & Employ. ¹³	71.1	-2.3	-3.20	0.37
	Administration for Native Americans	38.0	0.6	1.49	0.79

⁵ Table 3.1—Outlays By Superfunction and Function: 1940–2020, FY 2016 Historical Tables

⁶ Table 5.1—Budget Authority By Function and Subfunction: 1976–2020, FY 2016 Historical Tables, Function 300

⁷ Table 5.4—Discretionary Budget Authority by Agency: 1976–2020, FY 2016 Historical Tables

⁸ Public Budget Database, Budget of the United States Government, FY 2016, Budget Analysis Branch, February 2015

⁹ Table 5.1—Budget Authority by Function and Subfunction: 1976–2020, FY 2016 Historical Tables, Function 551

¹⁰ Table 5.4—Discretionary Budget Authority by Agency: 1962–2020, FY 2016 Historical Tables

¹¹ Table 3.2—Outlays by Function and Subfunction: 1962–2020, FY 2016 Historical Tables

¹² Table 4.1—Outlays by Agency: 1962–2020, FY 2016 Historical Tables

¹³ Walke, R. (2000). Indian-Related Federal Spending Trends, FY 1975-FY2001, Appendix Table 1 and US Department of Labor, Training and Employment Programs, Summary of Budget Authority, FY 1984 to 2013, Budget Authority Tables

As an example, from FY1977 to FY2016 the average level of spending for BIA/OST was \$1.8 billion, increasing by about \$60 million a year, for a change ratio of 3.3 in current dollars (before adjusting for inflation).

Table 2 shows the trends in selected programs but adjusted for inflation in 2009 dollars. To account for inflation, nominal dollar amounts were deflated using the Gross Product Deflator (Chained Price Index, non-defense), from Table 10.1 of the Historical Budget Tables of the FY 2016 Budget of the United States.¹⁴ Deflated amounts show the purchasing power of the nominal dollar in 2009, which was selected as the base year for this paper. Deflated values are the level of goods and services that can be purchased with a nominal dollar amount after the purchasing power of that amount has been adjusted for inflation. That is, \$1 dollar in 2014 will purchase the goods and services \$.92 bought in 2009.

An agency's budget may increase in nominal dollars, but when inflation is taken into account, the increase will be much smaller, or even a decline, in constant dollars. For instance, in current dollars (which means before adjusting for inflation), the BIA/OST budget increased by a 3.3 change ratio from FY1977 to FY2016. But when accounting for inflation, the BIA/OST budget increased with a 0.6 change ratio each year. This pattern occurs in all the spending categories examined and provides a more realistic view of respective budget trends. The following analysis reviews trends in spending in constant dollars. Budget data in nominal as well as constant dollars are included in Appendix 1 and 2 at the end of this report.

Table 2: Trends in Selected Programs, Functions in the Federal Budget in Constant Dollars, FY1977-FY2016

	Dollar figures in millions	Average Level (A)	Annual Change (B)	Change Ratio (B/A)	(r ²) Trend Consistency
Overall	Total Federal Non-Defense Budget	1,595,884.4	49,176.0	3.08	0.92
	Natural Resources Function	32,346.3	329.9	1.02	0.34
	DOI Discretionary Budget Authority	10,927.4	21.2	0.19	0.03
	BIA and OST	2,385.1	15.3	0.64	0.29
	BIA	2,309.3	9.2	0.40	0.15
	BIA construction	263.2	-2.8	-1.05	0.06
Health	HHS Discretionary Budget Authority	52,919.2	1,651.6	3.12	0.81
	Health Function Budget Authority	168,684.9	9,472.8	5.62	0.92
	IHS Services	2,367.5	7.1	3.01	0.97
	IHS Facilities	324.4	9.0	2.78	0.46
	IHS, total	2,691.9	80.3	2.98	0.95
Edu.	DoED, Discretionary Budget Authority	44,530.9	1,461.2	3.28	0.51
	Education Function	75,660.4	1,155.4	1.53	0.41
	DoEd, Indian Education	126.5	-1.0	-0.78	0.16
	DOI, Indian Education	662.4	4.6	0.69	0.24
Econ. Dev.	Training and Employment Sub-Function	10,862.2	-327.9	-3.0	0.40
	DOL Discretionary B.A.	15,534.0	-348.8	-2.3	0.33
	DOL Outlays	62,745.5	638.2	1.02	0.07
	Indian & Native Am. Training & Employment	125.4	-8.3	-6.6	0.43
	Administration for Native Americans	53.6	-0.9	-1.63	0.45

¹⁴ Table 10.1—Gross Domestic Product and Deflators Used in the Historical Tables: 1940–2020, non-defense

Figure 2 shows the change ratios listed in Table 2 for BIA, OST, DOI, the Natural Resources Budget Function, the Department of Health and Human Services (HHS), the Health Budget Function, the Indian Health Service (IHS), IHS Facilities, Department of Education, the Education Budget Function, Indian Education at the Department of Education, Bureau of Indian Education (BIE), Training and Employment Budget Function, and Indian and Native American Employment and Training over the FY1977-FY 2016 time period, adjusted for inflation. Table 3 displays deflated budget data for the FY2000-2016 time period.

Figure 2: Comparison of Change Ratios based on Constant Dollars, FY1977-FY2016

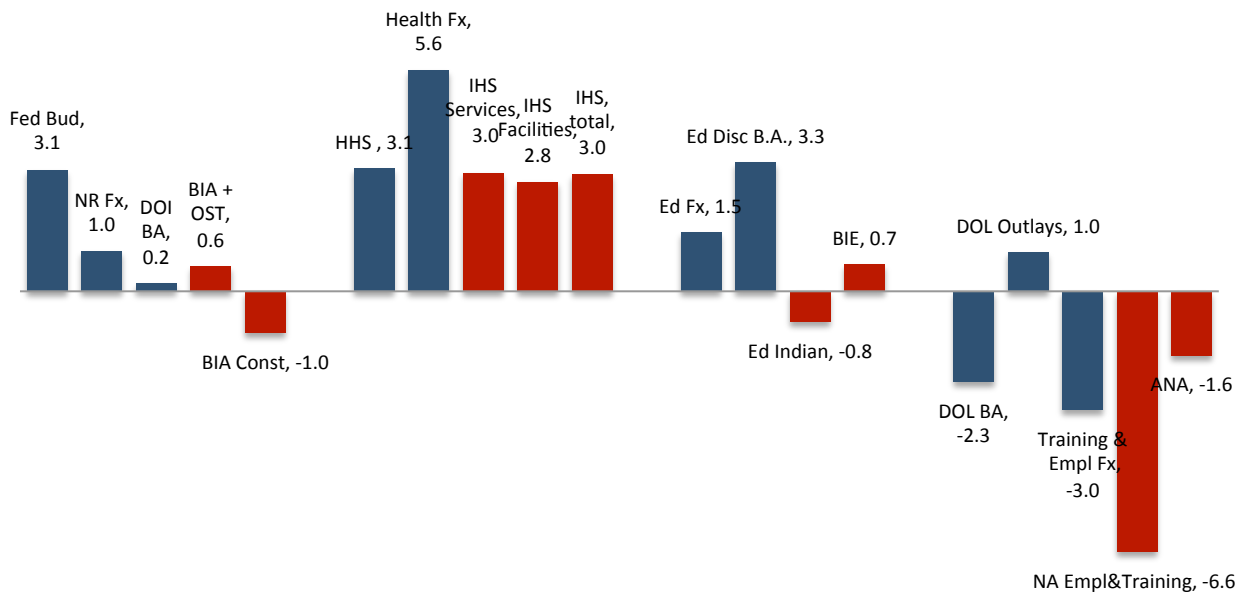


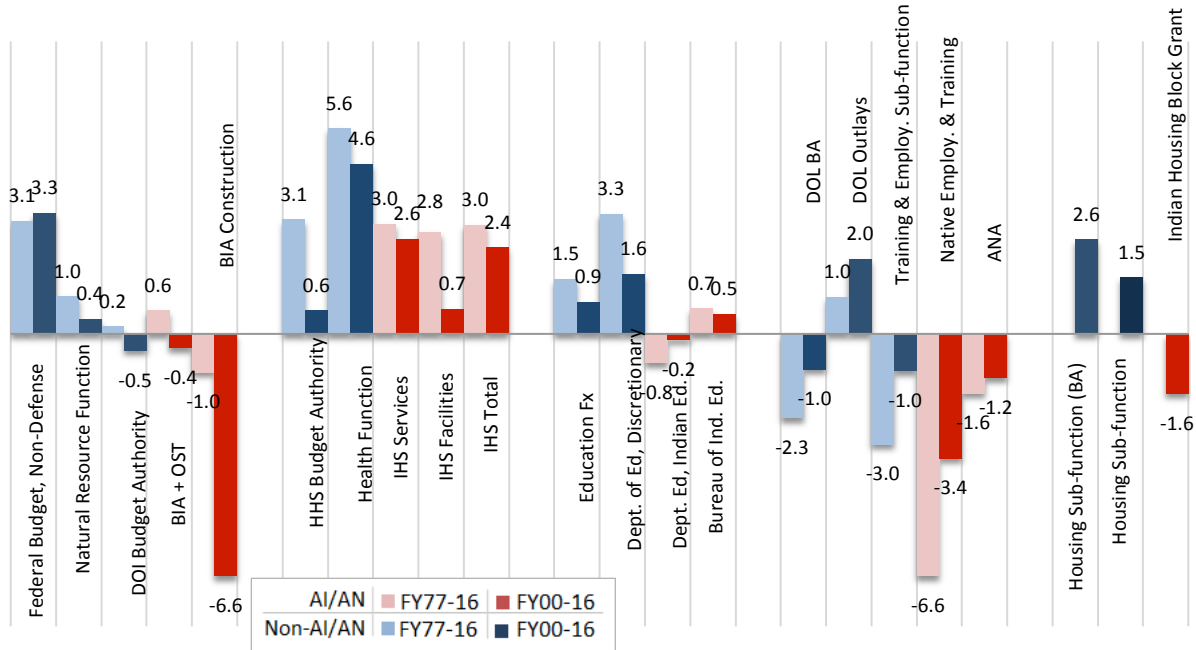
Table 3: Trends in Selected Programs and Functions in the Federal Budget in Constant Dollars, FY2000-FY2016

Dollar figures in millions		Average Level	Annual Change	Change Ratio	(r ²) Trend Consistency
Overall	Total Federal Non-Defense Budget	2,200,017.0	72,746.0	3.31	0.88
	Natural Resources Function	37,461.8	150.5	0.40	0.02
	DOI Discretionary B.A.	11,713.8	-53.2	-0.45	0.09
	BIA and OST	2,655.8	-10.3	-0.39	0.08
	BIA	2,488.3	-8.1	-0.33	0.06
	BIA Construction	278.1	-18.4	-6.62	0.37
Health	HHS Discretionary B.A.	75,389.8	478.1	0.63	0.05
	Health Function B.A.	283,696.0	13,170.0	4.64	0.81
	IHS Services	3,200.2	83.1	2.60	0.91
	IHS Facilities	440.2	3.0	0.67	0.02
	IHS, total	3,640.4	86.1	2.36	0.85
Edu.	DoED, Discretionary Budget Authority	64,988.8	1,059.6	1.63	0.05
	Education Function	93,697.9	930.0	0.99	0.06
	DoEd, Indian Education	126.2	-0.2	-0.16	0.01
	DOI, Education, BIE	721.5	3.9	0.54	0.28
Housing	Housing Assistance Sub-Function (B.A.)	40,364.4	1,042.0	2.58	0.08
	Housing Assistance Sub-Function (Outlays)	43,756.5	674.7	1.54	0.35
	Indian Housing Block Grant	695.3	-11.4	-1.64	0.18
Econ Dev	Training and Employment Subfunction	8,159.2	-82.7	-1.01	0.13
	Indian and Native American Training & Empl	54.6	-1.9	-3.40	0.96
	Administration for Native Americans	47.3	-0.6	-0.60	0.49

Overall Budget Trends

To display overall trends across agencies, Figure 3 compares change ratios for two time periods and groups tribal programs next to the comparable programs serving the general population. Figure 3 shows the inflation-adjusted change ratios over the FY 1977 to FY 2016 time period compared to the FY 2000 to FY 2016 time periods. The blue bars represent spending areas that benefit the entire US general population and the red bars signify the change ratios for major Indian-related spending areas. The dark red and dark blue represent the change ratios from FY 2000 to FY 2016 and the lighter red and lighter blue bars show the change ratios from FY 1977 to FY 2016.

Figure 3: Comparison of Change Ratios based on Constant Dollars, FY 1977-2016, FY 2000-2016



The comparison in constant dollars of Indian-related spending to comparable budget items across the federal budget shows that most Indian related spending areas continue to lag behind their non-Indian counterparts. This trend generally holds true over the FY1977 to FY2016 time period as well as over the FY2000 to FY 2016 time period. Among the Indian-related budget items, the Indian Health Service increased with the highest change ratio (3.0 from FY1977 to FY2016). Encouragingly, in recent years, the IHS budget and BIA budgets have received increased investments relative to the discretionary budget authority for the departments in which they are housed (DOI and HHS, respectively). However, BIA’s budget did not increase proportionally as much as the Natural Resource budget function. Similarly, the change ratio for the Health Budget function (5.6), which includes both discretionary and mandatory funding, was higher than for IHS, which is a discretionary program.

Cross-Cutting Recommendations

- Across each budget area, NCAI recommends that the Indian-related spending should receive at least equitable increases as the comparable spending for the general population.
- The inequity in Figure 3 points to the need to move funding for the federal trust responsibility out of the constraints of the discretionary side of the federal budget.

The remainder of this paper provides detail on the above spending categories, exploring the fluctuation over time, and offering more information on each spending category.

Bureau of Indian Affairs and Office of Special Trustee

- NCAI urges at least equitable increases to BIA and BIA construction relative to the comparable spending for the general population.
- Increases should support stable base funding for core tribal government programs.

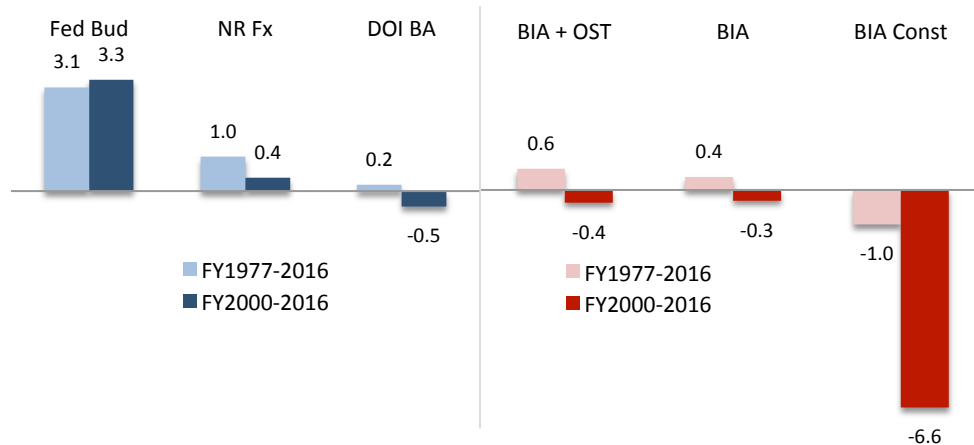
Overall, from FY 1977 to FY 2016, BIA and OST spending increased on average \$59.9 million a year (a 3.06 change ratio), representing a higher change ratio than the Department of the Interior’s budget over the same time period (2.95) but a much lower change ratio than the total federal non-defense budget of 5.3 (see Table 1). When adjusted for inflation in Table 4, BIA and OST spending increased on average \$15.3 million a year in constant 2009 dollars (a 0.64 change ratio), with a higher change ratio than the Department of the Interior’s budget had over the same time period (0.19). However, overall federal spending over the same time period went up at a rate of \$49.2 billion a year (3.1 change ratio).

Table 4: Trends in DOI, Natural Resources, and BIA in Constant Dollars (Millions)

		Average Level	Annual Change	Change Ratio	(r ²) Trend Consistency
FY 2000-2016					
Overall	Total Federal Non-Defense Budget	2,200,017.0	72,746.0	3.31	0.88
	Natural Resources Function	37,461.8	150.5	0.40	0.02
	DOI Discretionary B.A.	11,713.8	-53.2	-0.45	0.09
	BIA and OST	2,655.8	-10.3	-0.39	0.08
	BIA	2,488.3	-8.1	-0.33	0.06
	BIA Construction	278.1	-18.4	-6.62	0.37
FY 1977-2016					
Overall	Total Federal Non-Defense Budget	1,595,884.4	49,176.0	3.08	0.92
	Natural Resources Function	32,346.3	329.9	1.02	0.34
	DOI Discretionary Budget Authority	10,927.4	21.2	0.19	0.03
	BIA and OST	2,385.1	15.3	0.64	0.29
	BIA	2,309.3	9.2	0.40	0.15
	BIA construction	263.2	-2.8	-1.05	0.06

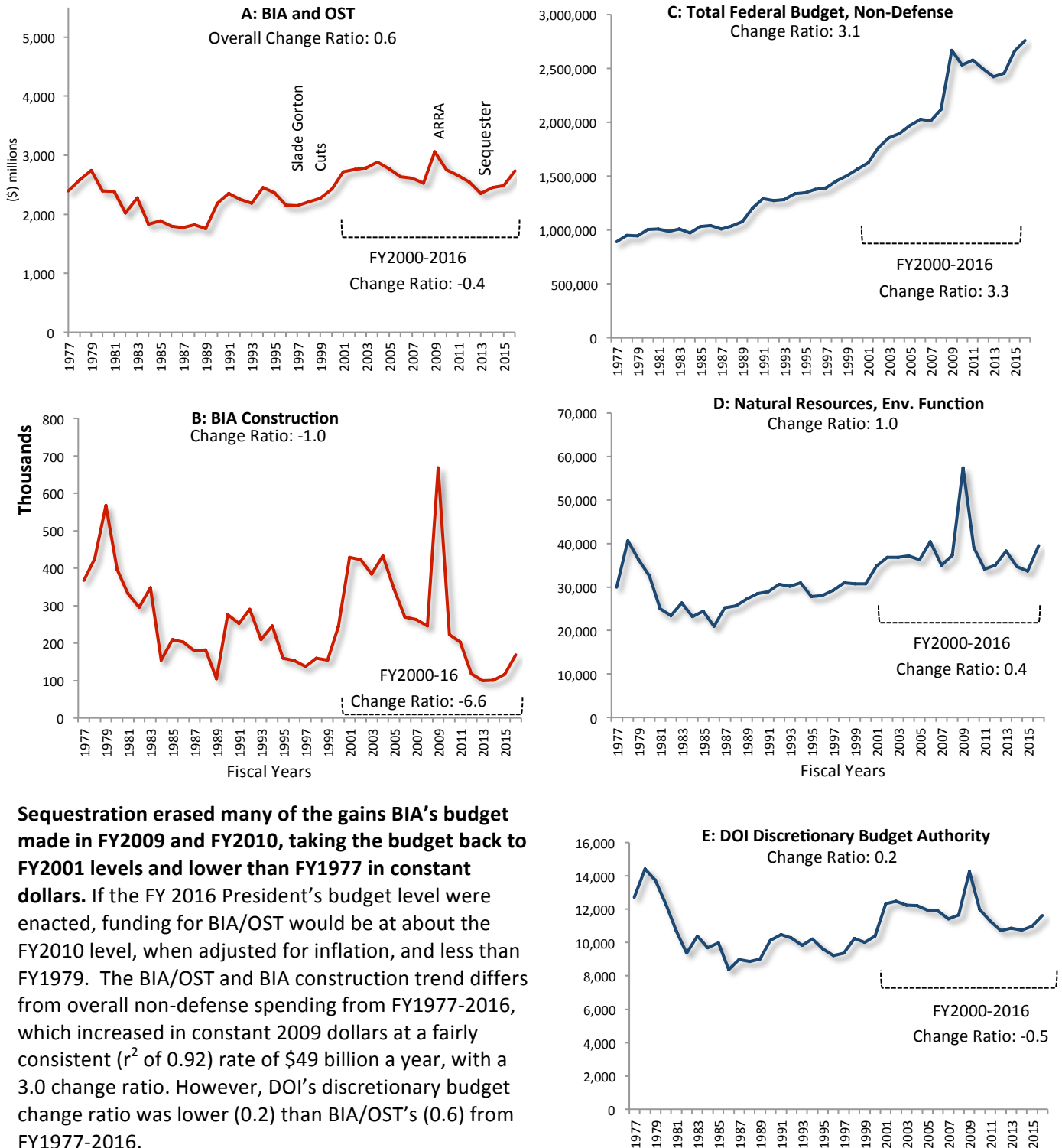
Figure 4 shows the inflation adjusted change ratios for BIA/OST and BIA construction compared to the federal budget, natural resource budget function, and DOI budget authority. The ratios cover two time periods: the light blue and red cover FY 1977-2016 and the dark blue and red cover FY 2000-2016. **The BIA/OST change ratio and BIA alone ratio for both periods are slightly higher than the overall DOI change ratio, however, not as high as the overall Natural Resource budget function (0.4 from FY 2000-2016 and 1.0 from FY 1977-2016).**

Figure 4: Change Ratios in BIA Compared to DOI, Natural Resources, and the Federal Budget



The line graphs in Figure 5 show the BIA/OST budget from FY1977 to FY2016, adjusted for inflation, followed by the trend for the BIA construction account, the total federal budget (excluding defense and payments on the national debt), and the Natural Resources Budget function. From FY1977 to the levels proposed in the FY2016 President’s budget, BIA and OST’s budget trend has been irregular, with declines in the mid-1980s, gains in the early 1990s, reductions again in the mid-1990s, and high points in FY2004 and FY2010 (excluding one-time Recovery Act funds in FY2009).

Figure 5: FY1977-2016 BIA Trends in Inflation Adjusted Dollars



Sequestration erased many of the gains BIA’s budget made in FY2009 and FY2010, taking the budget back to FY2001 levels and lower than FY1977 in constant dollars. If the FY 2016 President’s budget level were enacted, funding for BIA/OST would be at about the FY2010 level, when adjusted for inflation, and less than FY1979. The BIA/OST and BIA construction trend differs from overall non-defense spending from FY1977-2016, which increased in constant 2009 dollars at a fairly consistent (r^2 of 0.92) rate of \$49 billion a year, with a 3.0 change ratio. However, DOI’s discretionary budget change ratio was lower (0.2) than BIA/OST’s (0.6) from FY1977-2016.

Health

- NCAI urges at least equitable increases to the comparable spending for the general population on health care, in this case the Health Budget Function 551.

Table 5 and Figure 6 show federal spending for the Department of Health and Human Services (HHS), IHS, and health budget authority according to the health budget sub-function 551. The federal budget is divided into categories known as budget functions, which include all spending for a given topic, regardless of agency. Sub-function 551 is health care services, discretionary and mandatory. The health 551 sub-function budget authority averaged \$168.7 billion in constant dollars during FY1977-2016, increasing at a rate of \$9.5 billion a year, and with a change ratio of 5.6. During the same time period, expenditures at HHS averaged \$465 billion, increasing at \$21.5 billion a year, for a change ratio of 4.6. IHS appropriations increased at a lower change ratio (3.0) than for HHS outlays, HHS discretionary budget authority (3.1) and the health care services budget sub-function from FY1977 to FY2016. However, from FY2000 to FY2016, IHS overall had a higher change ratio (2.4) than the discretionary budget authority at HHS (0.6), but did not match the change ratios for HHS outlays (4.0) or the overall health care budget sub-function (4.6).

Table 5: Trends in Health, HHS, and IHS in Constant Dollars (Millions)

FY2000-2016		Average Level	Annual Change	Change Ratio	(r ²) Trend Consistency
Health	HHS Discretionary Budget Authority	75,389.8	478.1	0.63	0.05
	HHS Outlays ¹⁵	723,487	28983	4.01	0.96
	Health Care Services Sub-Function B.A.	283,696.0	13,170.0	4.64	0.81
	IHS Services	3,200.2	83.1	2.60	0.91
	IHS Facilities	440.2	3.0	0.67	0.02
	IHS, total	3,720.4	109.9	2.95	0.84
FY1977-2016		Average Level	Annual Change	Change Ratio	(r ²) Trend Consistency
Health	HHS Discretionary Budget Authority	52,919.2	1,651.6	3.12	0.81
	HHS Outlays	465,193.8	21,562.0	4.64	0.96
	Health Care Services Sub-Function B.A	168,684.9	9,472.8	5.62	0.92
	IHS Services	2,367.5	7.1	3.01	0.97
	IHS Facilities	324.4	9.0	2.78	0.46
	IHS, total	2,691.9	80.3	2.98	0.95

Figure 6: Health Change Ratios based on Constant Dollars

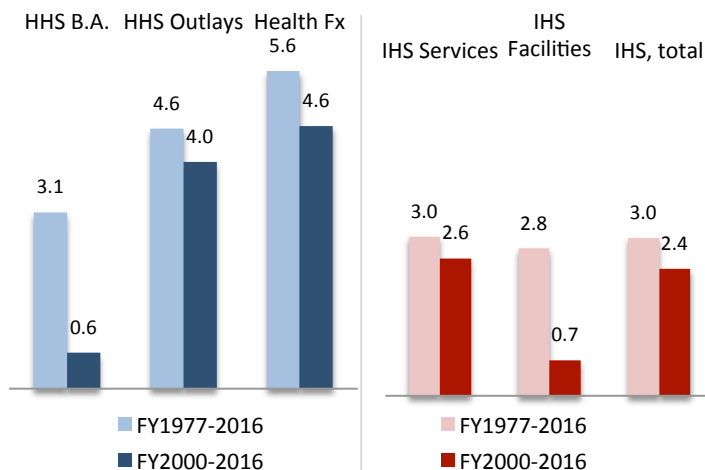
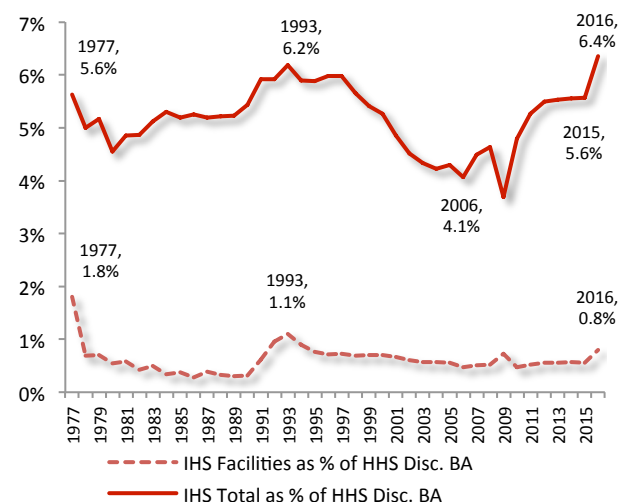


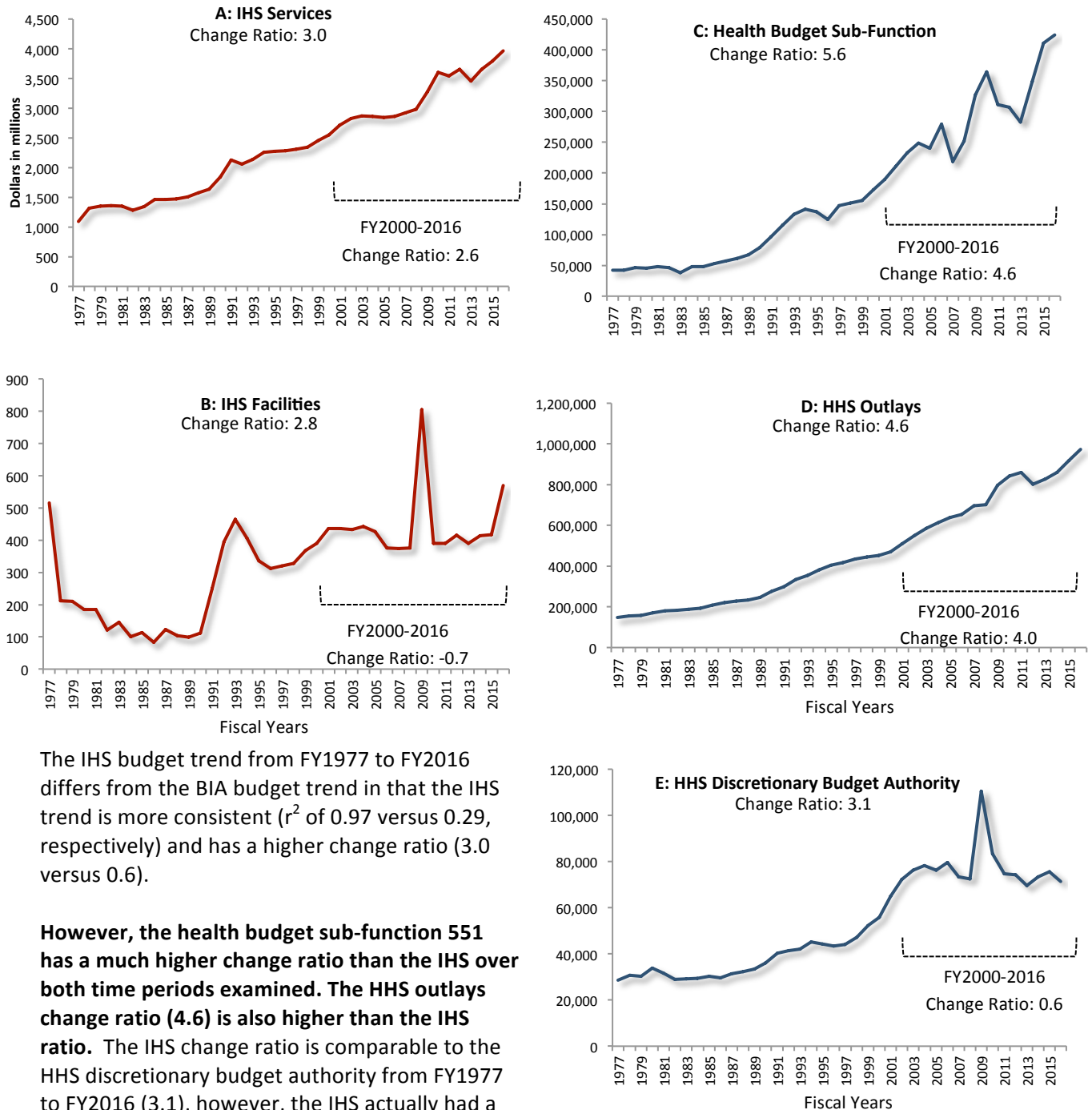
Figure 7: IHS as Percent of HHS Discretionary Budget



¹⁵ Table 4.1—Outlays by Agency: 1962–2020, FY2016 Historical Tables

The line graphs in Figure 8 show the IHS budget from FY1977 to FY2016, adjusted for inflation, followed by the trend for IHS facilities, HHS discretionary budget authority, HHS outlays, and the health care services budget sub-function for comparisons with similar aggregate spending for the general population.

Figure 8: FY1977-2016 Inflation Adjusted Health Trends



The IHS budget trend from FY1977 to FY2016 differs from the BIA budget trend in that the IHS trend is more consistent (r^2 of 0.97 versus 0.29, respectively) and has a higher change ratio (3.0 versus 0.6).

However, the health budget sub-function 551 has a much higher change ratio than the IHS over both time periods examined. The HHS outlays change ratio (4.6) is also higher than the IHS ratio. The IHS change ratio is comparable to the HHS discretionary budget authority from FY1977 to FY2016 (3.1), however, the IHS actually had a higher ratio (2.6) than HHS did in discretionary budget authority (0.6) from FY2000 to FY2016. IHS facilities had the lowest change ratio of any health category examined, 2.8 from FY1977 to FY2016 and -0.7 from FY2000 to FY2016. The FY2016 President’s budget includes a substantial increase for the IHS facilities budget, without which, the change ratio would be even lower over both time periods.

Education

- NCAI urges at least equitable increases to the comparable spending for the general population on education, in this case Department of Education.
- Increases should support stable base funding for Indian education.

Table 6 shows trends in education spending, including discretionary budget authority for Department of Education (DoED); Training, Employment, and Social Services Budget Function 500; DoED Indian Education; and DOI Bureau of Indian Education (BIE). Overall, the DoED discretionary budget authority (see Figure 11C) averaged \$44.5 billion from FY1977 to FY2016 and grew at a rate of \$1.5 billion a year, for a change ratio of 3.3. Education outlays had a lower change ratio (2.6) than the overall federal non-defense budget change ratio (3.1) from FY1977 to FY2015. The DoED Indian Education spending averaged \$126.5 million, declining at a rate of \$1 million a year, with a change ratio of -0.8 from FY1977 to FY2016. BIE averaged \$662.4 million over the same time period, increasing at a rate of \$4.6 million a year, for a change ratio of 0.7, also a lower change ratio than the overall Department of Education budget authority (3.3).

Table 6: Trends in Education Spending in Constant Dollars (Millions)

FY 2000 -FY 2016		Average Level	Annual Change	Change Ratio	(r ²) Trend Consistency
	Total Federal Non-Defense Budget	2,200,017.0	72,746.0	3.31	0.88
Edu.	DoED, Discretionary Budget Authority	64,988.8	1,059.6	1.63	0.05
	Education Function	93,697.9	930.0	0.99	0.06
	DoED, Indian Education	126.2	-0.2	-0.16	0.01
	DOI, Education, BIE	721.5	3.9	0.54	0.28
FY 1977-FY 2016		Average Level	Annual Change	Change Ratio	(r ²) Trend Consistency
	Total Federal Non-Defense Budget	1,595,884.4	49,176.0	3.08	0.92
Edu.	DoED, Discretionary Budget Authority	44,530.9	1,461.2	3.28	0.51
	Education Function	75,660.4	1,155.4	1.53	0.41
	DoED, Indian Education	126.5	-1.0	-0.78	0.16
	DOI, Indian Education	662.4	4.6	0.69	0.24

Figure 9: Education Change Ratios based on Constant Dollars

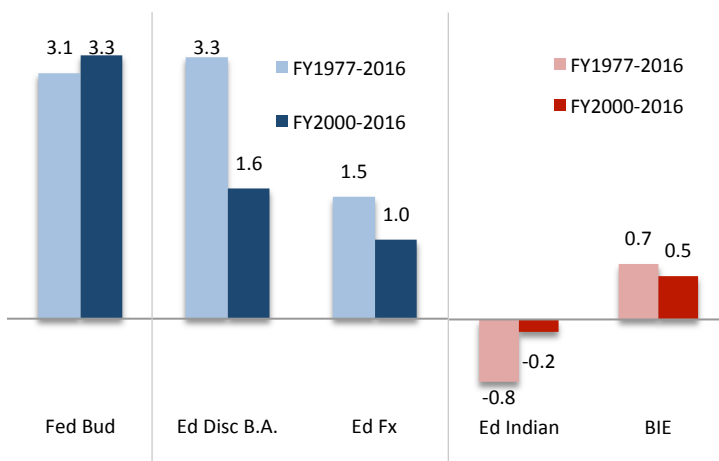


Figure 10: Indian Ed. as Percent of DoED Budgets

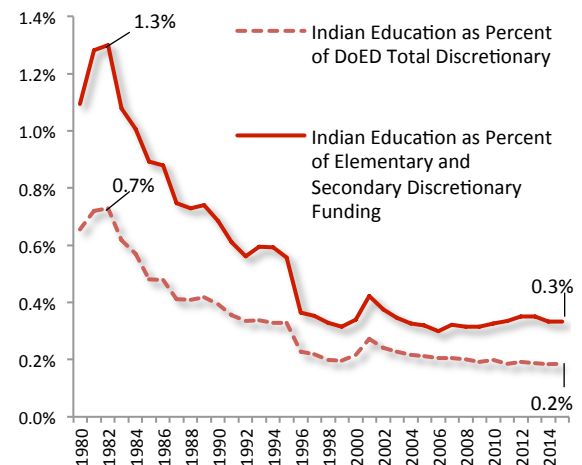
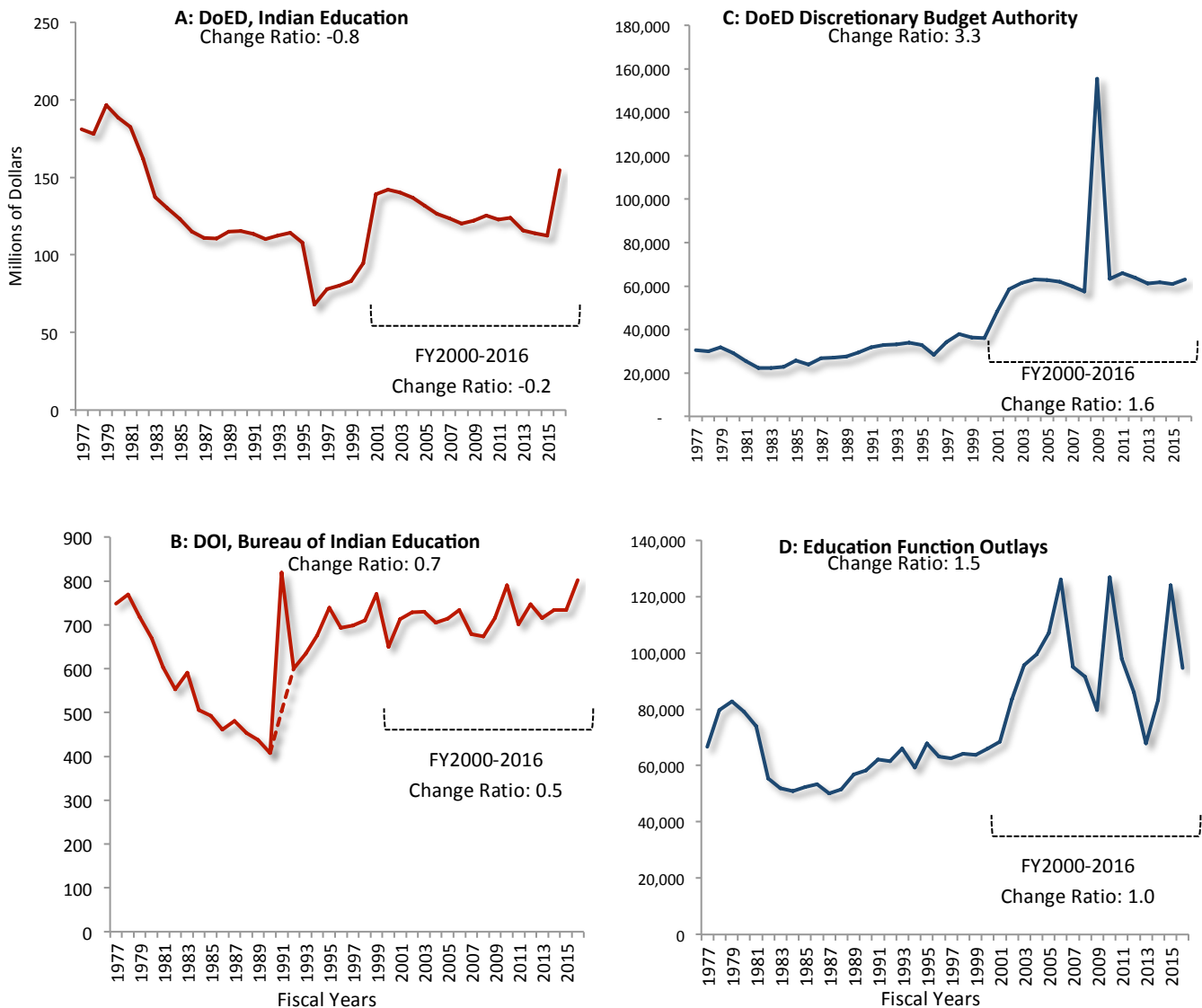


Figure 9 shows the change ratios for the education spending categories in Table 6. **Of any education spending category, Indian Education at DoED declined most steeply from FY1977 to FY2016.** Figure 10 displays DoED Indian Education as a percentage of the total discretionary funding in DoED and as a percentage of the Elementary and Secondary discretionary funding. **As a percent of the overall DoED discretionary budget, Indian Education reached a high point at 0.7 percent in FY1982, but then steadily declined to about 0.2 percent in FY2015.**

The line graphs in Figure 11A-D show education budget trends adjusted for inflation for the Department of Education (DoED) discretionary spending, DoED Indian Education, DOI Bureau of Indian Education, and the federal budget function for Education, Training, Employment, and Social Services.

Indian Education at DoED from FY1977 to FY2016 shows the steepest decline for both time periods examined and the most irregular funding (r^2 of 0.16 from FY1977 to FY2016). In FY1996, DoED Indian Education received a substantial reduction after a longterm downward trend from FY1977 to FY1995, followed by large increases in FY1999 and FY2001. However, spending declined after FY2002 through FY2015, when adjusted for inflation. The FY2016 President’s budget includes a substantial increase of about \$50 million, mostly targeted for the Special Programs for Indian Children to make new Native Youth Community Project (NYCP) awards, which are on top of grants to Local Education Agencies, the principal vehicle for addressing the particular needs of AI/AN children in public schools. The change ratio for BIE at DOI was higher from FY1977 to FY2016 (0.7), although BIE’s budget saw steady declines from FY1977 to FY1990, then an increase for forward funding in FY1991, and irregular increases up to FY2016.

Figure 11: FY1977-2016 Inflation Adjusted Education Trends



Economic Development and Employment and Training

- NCAI urges at least equitable increases to the comparable spending for the general population on employment and training and economic development.

This section compares funding for the Native American Employment and Training Program, the Administration for Native Americans (ANA), the Department of Labor (DOL) discretionary budget authority, DOL outlays (which includes mandatory spending), and the Training and Employment budget sub-function. For all spending areas examined except DOL outlays, the programs and departments lost ground over both time periods, FY1977 to FY2016 and FY2000 to FY2016. The Training and Employment sub-function funding declined in constant dollars by a change ratio of -3.0 (\$327.9 million a year) on an average spending level of \$10.8 billion. However, the Native American Employment and Training program declined by a change ratio of -6.6 over the same time period (losing about \$8 million a year), on an average spending level of \$125 million in 2009 constant dollars.

Table 7: Trends in Employment and Training Spending in Constant Dollars (Millions)

		Average Level	Annual Change	Change Ratio	(r ²) Trend Consistency
FY2000-FY2016					
Economic Dev.	Training and Employment Subfunction	8,159.2	-82.7	-1.0	0.13
	DOL Discretionary B.A.	12,727.0	-123.2	-1.0	0.13
	DOL Outlays	74,973.7	1,528.1	2.0	0.04
	Indian and Native American Training & Empl	54.6	-1.9	-3.4	0.96
	Administration for Native Americans	47.3	-0.6	-1.2	0.49
FY1977-FY2016					
Economic Dev.	Training and Employment Subfunction	10,862.2	-327.9	-3.0	0.40
	DOL Discretionary B.A.	15,534.0	-348.8	-2.3	0.33
	DOL Outlays	62,745.5	638.2	1.0	0.07
	Indian and Native American Training & Empl	125.4	-8.3	-6.6	0.43
	Administration for Native Americans	53.6	-0.9	-1.6	0.45

Figure 12: Change Ratios based on Constant Dollars

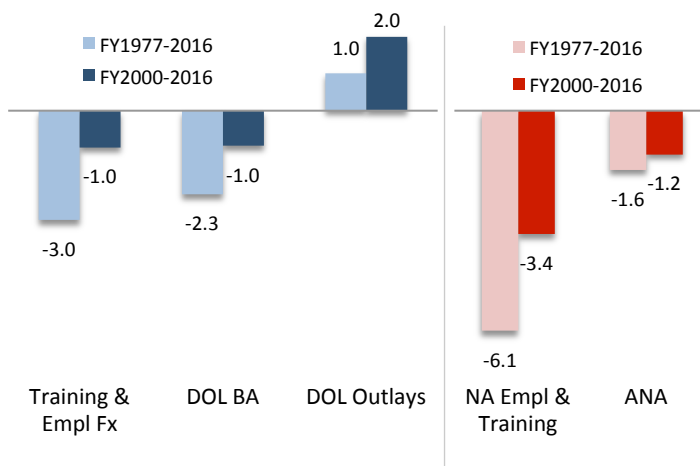
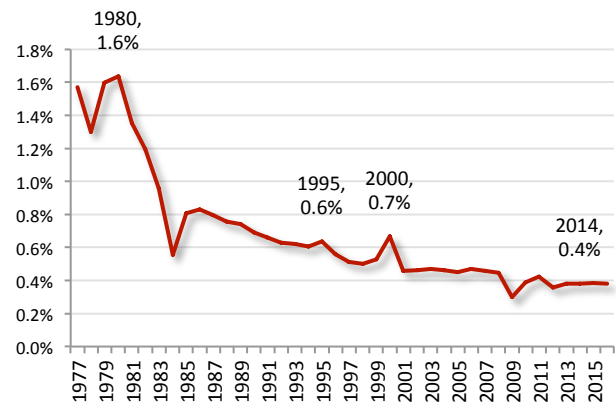
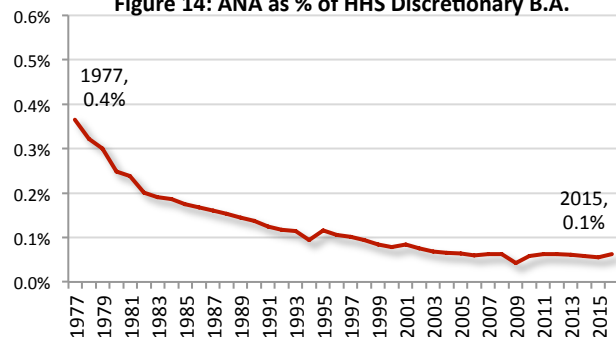


Figure 13: INAP as % of DOL Discretionary B.A.



Over both time periods the Native American Employment and Training program declined more steeply than the overall DOL discretionary budget, as shown in Figure 12 as well as Figure 13. The ANA declined with a smaller change ratio (-1.6) than for DOL discretionary spending (-2.3); but compared to HHS, ANA’s budget shrank as a percentage of the HHS discretionary budget from 0.4 percent to 0.1 percent from FY 1977 to FY 2015 (Figure 14).

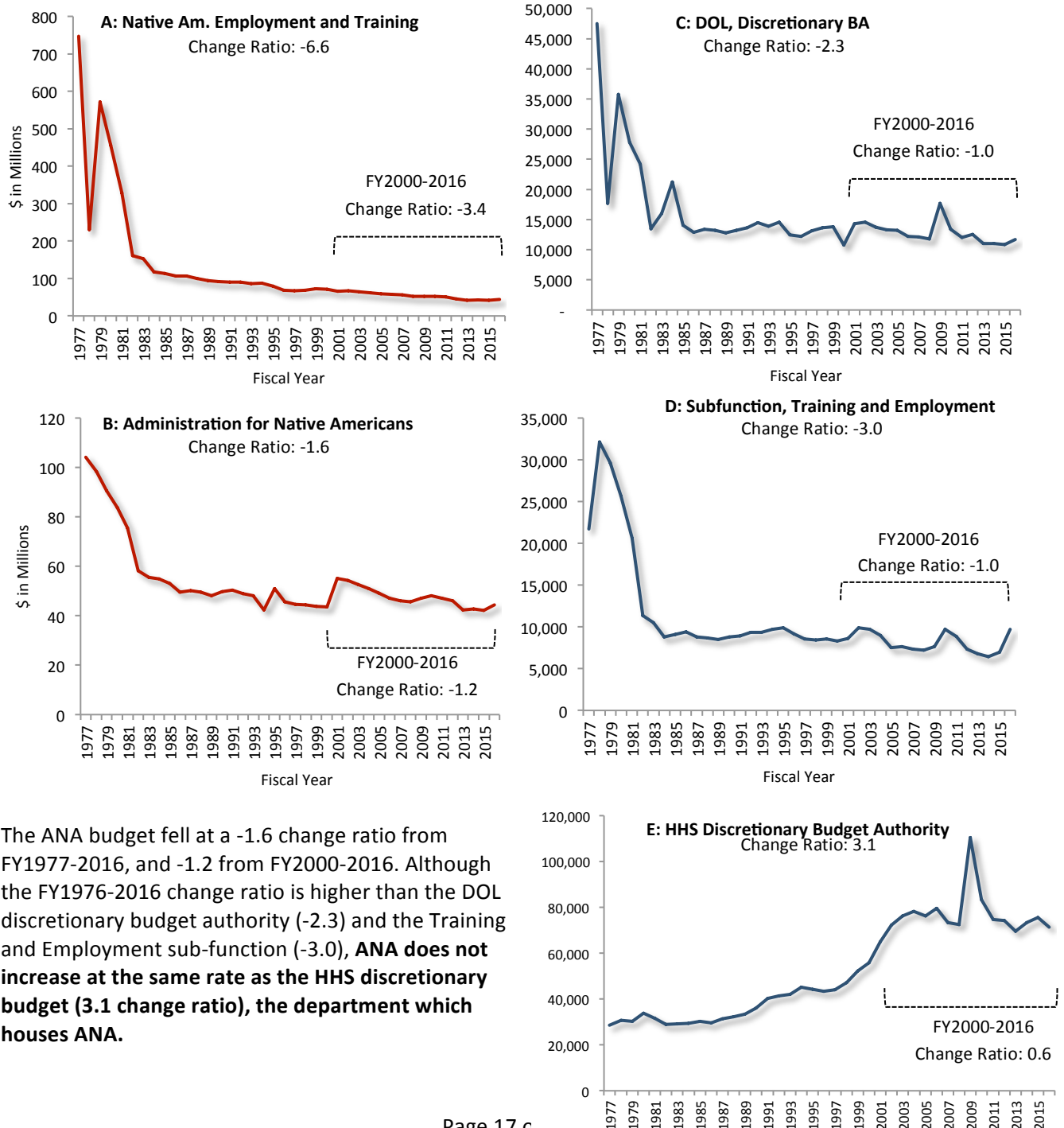
Figure 14: ANA as % of HHS Discretionary B.A.



The line graphs in Figure 15A-E display the budget trends for the spending categories in Table 7, as well as HHS, the department which houses ANA.

Of any spending category in this section, the Native American Employment and Training program declined in nominal and inflation adjusted dollars the most steeply, both over FY1977 to FY2016 (-6.6 change ratio) and FY2000 to FY2016 (-3.4 change ratio). The downward trend for the FY2000-2016 time period was very consistent (r^2 of 0.96). The DOL discretionary budget authority experienced an uneven (r^2 of 0.33) decline with a change ratio of -2.3 from FY1977-2016, although negative, a smaller absolute value for a change ratio than the Native American Employment and Training program.

Figure 15: FY1977-2016 Inflation Adjusted Economic Development Budget Trends



The ANA budget fell at a -1.6 change ratio from FY1977-2016, and -1.2 from FY2000-2016. Although the FY1976-2016 change ratio is higher than the DOL discretionary budget authority (-2.3) and the Training and Employment sub-function (-3.0), **ANA does not increase at the same rate as the HHS discretionary budget (3.1 change ratio), the department which houses ANA.**

Housing

- NCAI urges at least equitable increases to the comparable spending for the general population on housing.

Table 8 displays trends in housing spending from FY2000-2016. The budget authority for Housing Assistance sub-function 604 averaged about \$40.4 billion from FY2000 to FY2016, increasing \$1.0 billion each year on average, for a 2.6 change ratio. Housing Assistance sub-function outlays increased about \$674.7 million a year on a \$43.8 billion average spending level, for a change ratio of 1.5. The discretionary budget authority for the Department of Housing and Urban Development over the same time period did not increase with as high of a change ratio (0.1) as the sub-function 604 B.A. and outlays did. **Like other Indian-related budget items, the Indian Housing Block Grant (IHGB) had the lowest change ratio (-1.6) compared to the housing spending categories for the general US population.** From FY2000 to FY2016, the IHGB lost about \$11.4 million a year on an average spending level of \$695.3 million, for a change ratio of -1.6. See Figure 16 for a comparison of the change ratios for housing spending categories from FY2000 to FY2016.

Table 8: Trends in Housing Spending in Constant Dollars (Millions) FY2000-FY2016

Dollars in millions		Average Level	Annual Change	Change Ratio	(r ²) Trend Consistency
Housing	Total Federal Non-Defense Budget	2,200,017.0	72,746.0	3.31	0.88
	Housing Assistance Sub-Function 604 (B.A.)	40,364.4	1,042.0	2.58	0.08
	Housing Assistance Sub-Function 604 (Outlays)	43,756.5	674.7	1.54	0.35
	HUD Budget Authority	38,022.0	40.9	0.11	0.00
	Indian Housing Block Grant	695.3	-11.4	-1.64	0.18

Figure 16: Housing Change Ratios based on Constant Dollars

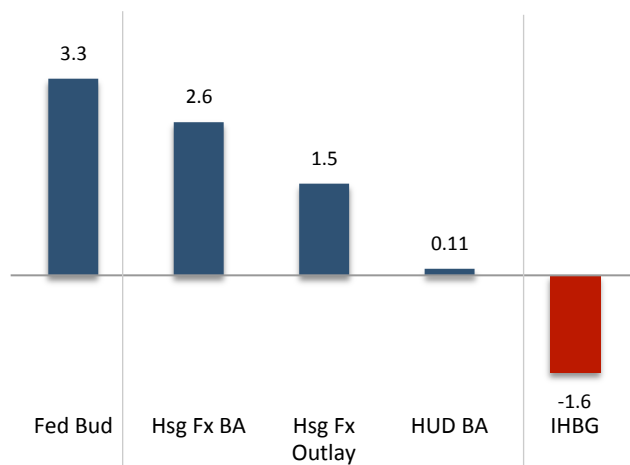


Figure 17: IHGB as % of HUD Budget Authority

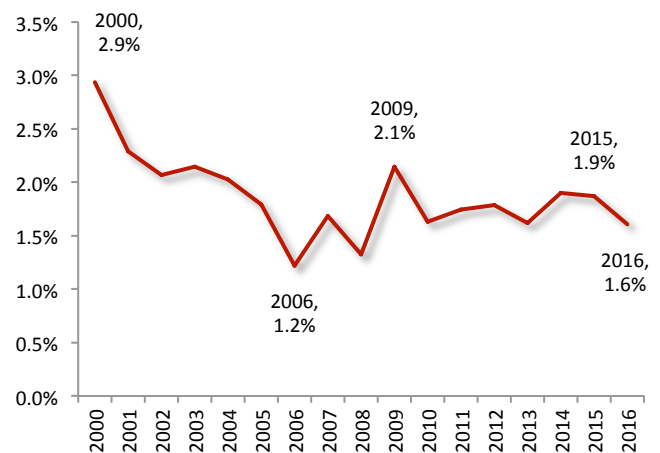
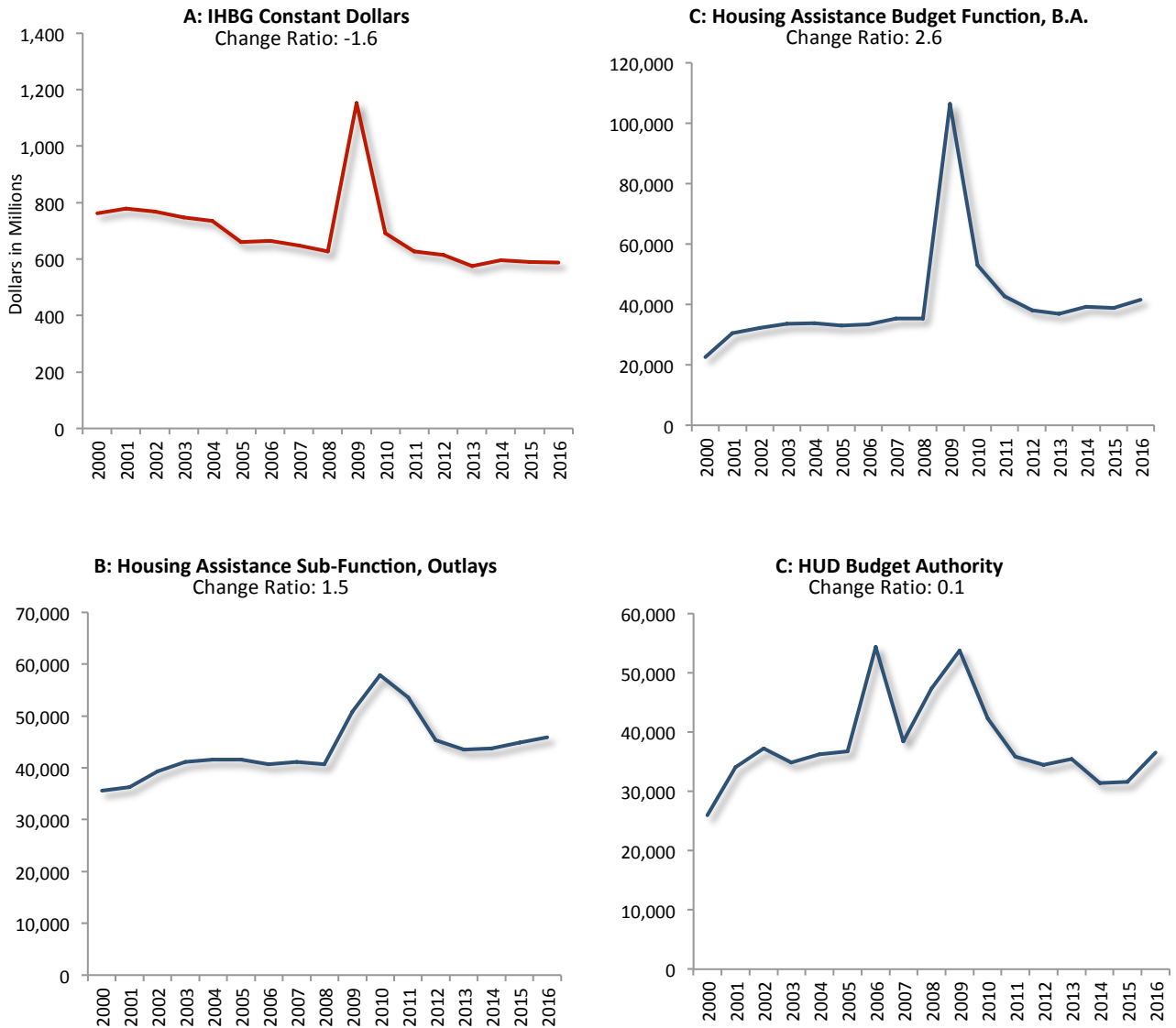


Figure 17 shows that the IHGB spending level decreased as a percentage of the overall discretionary budget authority for HUD from FY2000 to FY2016. In FY2000, IHGB comprised 2.9 percent of HUD’s discretionary budget, but declined to 1.2 percent in FY2006, and in FY2015, the most recent enacted appropriations bill, comprised 1.9 percent of HUD’s discretionary budget.

Figure 18A-D displays housing budget trends. The line graphs for housing spending show very irregular budget trends, likely due to the infusion of federal funds as a part of the American Recovery and Reinvestment Act.

Figure 18: Inflation Adjusted Housing Budget Trends



Appendix Table 1. Budget Data for Selected Programs, in Current Dollars, FY1977-FY2016
Dollar amounts in millions

Fiscal Year	Fed Bud, Non-Defense	Natural Resources Budget Function	DOI Disc. B.A.	BIA/OST	BIA Const.	HHS Discretionary B.A.	Health Function, 551	IHS	IHS Facilities
1977	282,077	9,489	4,026	757	116	9,048,487	13,403	346	163
1978	318,793	13,651	4,837	868	142	10,274,092	14,225	442	71
1979	345,053	13,251	5,019	1,001	207	11,023,322	17,028	492	77
1980	404,413	13,096	4,950	964	160	13,639,796	18,480	547	74
1981	451,962	11,171	4,781	1,068	149	14,206,351	21,520	607	83
1982	475,402	11,263	4,499	970	142	13,896,089	22,097	618	58
1983	508,653	13,297	5,240	1,150	176	14,696,506	19,228	679	74
1984	513,293	12,276	5,116	969	81	15,554,958	25,240	772	54
1985	564,125	13,332	5,459	1,032	114	16,600,774	26,454	801	62
1986	580,993	11,713	4,682	1,006	113	16,495,045	29,416	821	46
1987	583,410	14,570	5,196	1,026	104	18,131,524	32,880	870	71
1988	622,253	15,370	5,321	1,092	109	19,348,787	36,749	946	63
1989	671,207	16,973	5,605	1,090	65	20,709,503	42,011	1,020	62
1990	769,327	18,121	6,453	1,395	176	22,940,511	50,425	1,176	72
1991	856,492	19,216	6,957	1,559	168	26,657,054	63,879	1,411	166
1992	883,839	21,266	7,139	1,564	201	28,747,465	80,086	1,427	274
1993	919,589	21,621	7,047	1,570	150	30,134,297	95,637	1,530	334
1994	977,181	22,578	7,457	1,791	179	32,958,269	102,938	1,646	297
1995	1,011,545	20,919	7,224	1,775	120	33,311,000	103,099	1,707	253
1996	1,053,683	21,492	7,057	1,647	117	33,161,000	95,446	1,745	239
1997	1,086,630	22,923	7,326	1,680	107	34,398,000	114,741	1,807	250
1998	1,143,146	24,344	8,064	1,742	125	37,112,000	118,709	1,841	258
1999	1,197,318	24,403	7,964	1,803	123	41,436,000	123,638	1,948	292
2000	1,271,638	25,003	8,462	1,973	198	45,366,000	140,537	2,074	317
2001	1,351,947	28,957	10,268	2,265	357	54,152,000	157,657	2,266	363
2002	1,491,489	31,098	10,539	2,332	357	61,098,000	178,787	2,389	369
2003	1,602,093	31,771	10,579	2,402	332	65,825,000	200,807	2,476	374
2004	1,676,783	32,845	10,796	2,550	382	69,151,000	219,528	2,530	391
2005	1,792,677	33,000	10,883	2,523	313	69,445,000	219,113	2,596	389
2006	1,906,627	38,063	11,200	2,482	254	74,804,000	262,668	2,692	353
2007	1,940,319	33,732	11,024	2,513	253	70,763,000	210,534	2,819	361
2008	2,113,721	37,156	11,634	2,521	245	72,233,000	251,630	2,972	375
2009	2,669,763	57,392	14,287	3,061	668	110,544,000	327,095	3,276	805
2010	2,567,400	39,657	12,158	2,789	225	84,573,000	369,259	3,658	395
2011	2,667,543	35,356	11,684	2,754	210	77,276,000	322,458	3,666	404
2012	2,638,867	36,959	11,324	2,684	124	78,339,000	324,586	3,866	440
2013	2,600,335	41,038	11,654	2,528	106	74,626,000	303,786	3,713	419
2014	2,673,676	37,721	11,714	2,672	110	79,845,000	379,795	3,983	452
2015	2,931,923	37,181	12,128	2,741	129	83,330,000	453,963	4,182	460
2016	3,100,903	44,356	13,072	3,069	189	80,251,000	477,378	4,463	640
Source	Table 3.1 Outlays	Table 5.1	Table 5.4	Public Budget Database	Public Budget	Table 5.4	Table 5.1	Public Budget	Public Budget

Appendix Table 1. Budget Data for Selected Programs, in Current Dollars, FY1977-FY2016, Continued
Dollar amounts in millions

Fiscal Year	DoED	Education Function Outlays	DoED Indian Education	DOI Indian Ed	Training & Employ. sub fx	DOL	DOL Outlays	INAP	ANA
1977	9,674	21,104	57	237	6,877	15,046	23,225	236.5	33.0
1978	10,097	26,710	60	258	10,784	5,934	23,694	77.2	33.0
1979	11,650	30,223	72	262	10,833	13,054	23,448	208.7	33.1
1980	11,717	31,843	76	270	10,345	11,220	30,542	183.8	33.8
1981	11,409	33,152	82	270	9,241	10,830	30,911	146.8	33.8
1982	10,689	26,612	78	266	5,464	6,479	31,479	77.4	28.0
1983	11,265	26,197	69	298	5,295	8,065	38,683	77.4	28.0
1984	12,046	26,920	69	267	4,644	11,222	25,348	62.2	29.0
1985	14,057	28,592	67	270	4,972	7,709	24,738	62.2	29.0
1986	13,388	29,776	64	257	5,257	7,173	24,934	59.6	27.7
1987	15,538	28,921	64	278	5,084	7,716	24,208	61.5	29.0
1988	16,235	30,931	66	271	5,215	7,906	22,662	59.7	29.7
1989	17,138	35,328	72	273	5,292	7,970	23,442	59.0	30.0
1990	18,738	37,171	74	260	5,619	8,415	26,087	58.2	31.7
1991	21,184	41,235	75	543	5,934	9,025	34,790	59.6	33.4
1992	22,869	42,741	77	416	6,479	10,034	47,889	63.0	33.9
1993	23,853	47,380	81	455	6,700	9,954	45,452	61.9	34.5
1994	24,709	43,286	84	494	7,097	10,630	37,819	64.2	31.0
1995	24,664	51,027	81	555	7,430	9,378	32,808	59.8	38.4
1996	21,698	48,321	52	531	7,030	9,366	33,163	52.5	34.9
1997	26,637	48,975	61	546	6,681	10,250	31,088	52.5	34.9
1998	29,752	50,512	63	558	6,636	10,705	30,580	53.8	34.9
1999	28,766	50,605	66	612	6,783	10,979	32,995	57.8	34.9
2000	29,362	53,764	77	529	6,777	8,761	31,873	58.4	35.4
2001	40,103	57,094	116	594	7,192	11,958	39,707	55.0	46.0
2002	49,505	70,566	120	615	8,354	12,320	64,686	57.0	45.8
2003	53,112	82,587	121	630	8,379	11,834	69,563	55.6	45.5
2004	55,650	87,974	121	623	7,918	11,790	56,687	54.7	45.2
2005	57,179	97,555	120	651	6,852	12,037	46,949	54.2	44.8
2006	58,429	118,482	119	691	7,199	11,472	43,138	53.7	44.3
2007	57,843	91,656	119	654	7,080	11,682	47,544	53.7	44.3
2008	57,227	91,287	120	672	7,181	11,768	58,838	52.8	45.5
2009	155,408	79,749	122	716	7,652	17,698	138,157	52.8	47.0
2010	64,132	128,598	127	801	9,854	13,550	173,053	52.8	48.8
2011	68,346	101,233	127	726	9,139	12,456	131,975	52.7	48.8
2012	67,386	90,823	131	789	7,779	13,239	104,588	47.6	48.6
2013	65,708	72,808	124	768	7,271	11,861	803,07	45.1	45.5
2014	67,303	90,615	124	799	7,013	12,043	567,74	46.1	46.5
2015	67,136	136,756	124	809	7,692	11,947	527,97	46.1	46.5
2016	70,748	106,342	174	902	10,936	13,181	569,21	50.0	50.0
Source	Table 3.1 Outlays	Table 5.1	Table 5.4	Public Budget Database	Public Budget	Table 5.4	Table 5.1	Public Budget	Public Budget

Appendix Table 2. Budget Data for Selected Programs, in Constant Dollars, FY1977-FY2016
Dollar amounts in millions

Fiscal Year	Federal budget non-defense outlays	Natural Resources Budget Function	DOI Disc. B.A.	BIA/OST	BIA Const.	HHS Discretionary B.A.	Health Function, 551	IHS	IHS Facilities
1977	891,239	29,981	12,720	2,393	367	28,588	42,348	1,093	516
1978	950,203	40,689	14,417	2,586	425	30,623	42,399	1,317	212
1979	945,092	36,294	13,747	2,742	568	30,192	46,639	1,348	211
1980	1,003,257	32,488	12,280	2,392	396	33,838	45,845	1,356	184
1981	1,009,294	24,946	10,677	2,386	332	31,724	48,057	1,355	185
1982	989,596	23,445	9,365	2,020	295	28,926	45,997	1,286	121
1983	1,007,832	26,346	10,382	2,278	348	29,120	38,098	1,346	146
1984	972,146	23,250	9,689	1,835	154	29,460	47,803	1,462	102
1985	1,031,684	24,382	9,984	1,888	209	30,360	48,380	1,465	113
1986	1,039,902	20,965	8,380	1,800	203	29,524	52,651	1,469	83
1987	1,009,535	25,212	8,991	1,776	179	31,376	56,896	1,505	123
1988	1,038,473	25,651	8,880	1,823	182	32,291	61,330	1,579	104
1989	1,078,591	27,275	9,007	1,752	105	33,280	67,509	1,640	99
1990	1,207,356	28,438	10,127	2,189	276	36,003	79,135	1,845	112
1991	1,291,843	28,983	10,493	2,351	253	40,207	96,348	2,128	251
1992	1,273,910	30,651	10,290	2,255	290	41,434	115,431	2,056	395
1993	1,282,193	30,146	9,826	2,189	209	42,016	133,348	2,133	465
1994	1,338,421	30,925	10,214	2,453	246	45,142	140,992	2,255	407
1995	1,346,572	27,847	9,617	2,363	160	44,344	137,246	2,272	337
1996	1,376,644	28,079	9,220	2,152	153	43,325	124,701	2,280	312
1997	1,389,908	29,321	9,371	2,149	137	43,998	146,765	2,311	320
1998	1,454,199	30,968	10,258	2,216	159	47,210	151,010	2,342	328
1999	1,507,198	30,719	10,025	2,270	155	52,160	155,637	2,452	368
2000	1,563,361	30,739	10,403	2,426	243	55,773	172,777	2,550	390
2001	1,622,207	34,746	12,321	2,718	428	64,977	189,173	2,719	436
2002	1,765,494	36,811	12,475	2,760	423	72,322	211,632	2,828	437
2003	1,855,993	36,806	12,256	2,783	385	76,257	232,631	2,868	433
2004	1,897,243	37,163	12,215	2,885	432	78,243	248,391	2,863	442
2005	1,967,164	36,212	11,942	2,769	343	76,204	240,440	2,849	427
2006	2,026,602	40,458	11,905	2,638	270	79,511	279,196	2,861	375
2007	2,012,153	34,981	11,432	2,606	262	73,383	218,328	2,923	374
2008	2,119,869	37,264	11,668	2,528	246	72,443	252,362	2,981	376
2009	2,669,763	57,392	14,287	3,061	668	110,544	327,095	3,276	805
2010	2,531,703	39,106	11,989	2,750	222	83,397	364,125	3,607	390
2011	2,577,087	34,157	11,288	2,661	203	74,656	311,524	3,542	390
2012	2,497,272	34,976	10,716	2,540	117	74,136	307,169	3,659	416
2013	2,423,425	38,246	10,861	2,356	99	69,549	283,118	3,460	390
2014	2,454,490	34,629	10,754	2,453	101	73,299	348,660	3,656	415
2015	2,657,653	33,703	10,993	2,485	117	75,535	411,497	3,791	417
2016	2,758,810	39,463	11,630	2,730	168	71,398	424,714	3,971	569
Source	Table 3.1 Outlays	Table 5.1	Table 5.4	Public Budget Database	Public Budget	Table 5.4	Table 5.1	Public Budget	Public Budget

Appendix Table 2. Budget Data for Selected Programs, in Constant Dollars, FY1977-FY2016, Continued
Dollar amounts in millions

Fiscal Year	DoED	Education Function Outlays	DoED Indian Education	DOI Indian Ed	Training & Employ. sub fx	DOL	DOL Outlays	INAP	ANA
1977	30,566	66,679	181	748	6,877	47,539	73,381	801	104.3
1978	30,095	79,613	178	770	10,784	17,687	70,623	247	98.4
1979	31,909	82,780	196	718	10,833	35,755	64,224	613	90.7
1980	29,067	78,995	188	670	10,345	27,834	75,768	489	83.9
1981	25,478	74,033	182	603	9,241	24,185	69,029	353	75.5
1982	22,250	55,396	162	553	5,464	13,487	65,527	174	58.3
1983	22,320	51,906	137	591	5,295	15,980	76,646	165	55.5
1984	22,814	50,985	130	505	4,644	21,254	48,008	128	54.9
1985	25,708	52,290	123	493	4,972	14,098	45,241	124	53.0
1986	23,963	53,295	115	461	5,257	12,839	44,629	115	49.7
1987	26,887	50,045	111	481	5,084	13,352	41,890	115	50.2
1988	27,094	51,620	111	453	5,215	13,194	37,820	107	49.5
1989	27,540	56,770	115	438	5,292	12,807	37,670	102	48.2
1990	29,407	58,335	116	408	5,619	13,206	40,940	98	49.8
1991	31,952	62,195	114	819	5,934	13,612	52,474	96	50.3
1992	32,962	61,604	110	600	6,479	14,462	69,024	97	48.9
1993	33,259	66,062	112	634	6,700	13,879	63,374	93	48.1
1994	33,843	59,288	114	676	7,097	14,560	51,800	95	42.4
1995	32,833	67,927	108	739	7,430	12,484	43,674	86	51.1
1996	28,349	63,132	68	694	7,030	12,237	43,328	74	45.6
1997	34,071	62,644	78	698	6,681	13,111	39,765	72	44.7
1998	37,848	64,256	80	710	6,636	13,618	38,901	73	44.4
1999	36,211	63,702	83	770	6,783	13,820	41,534	78	43.9
2000	36,098	66,098	95	650	6,777	10,771	39,185	77	43.5
2001	48,120	68,507	139	713	7,192	14,348	47,645	71	55.2
2002	58,600	83,530	142	728	8,354	14,583	76,570	72	54.2
2003	61,529	95,675	140	730	8,379	13,709	80,587	69	52.7
2004	62,967	99,541	137	705	7,918	13,340	64,140	66	51.1
2005	62,744	107,050	132	714	6,852	13,209	51,519	64	49.1
2006	62,106	125,938	126	734	7,199	12,194	45,852	61	47.1
2007	59,984	95,049	123	678	7,080	12,114	49,304	59	46.0
2008	57,393	91,553	120	674	7,181	11,802	59,009	56	45.7
2009	155,408	79,749	122	716	7,652	17,698	138,157	56	47.0
2010	63,240	126,810	125	790	9,854	13,362	170,647	55	48.1
2011	66,028	97,800	123	701	9,139	12,034	127,500	54	47.1
2012	63,770	85,950	124	747	7,779	12,529	98,976	48	46.0
2013	61,238	67,855	116	716	7,271	11,054	74,843	44	42.4
2014	61,786	83,186	114	733	7,013	11,056	52,120	44	42.7
2015	60,856	123,963	112	733	7,692	10,829	47,858	43	42.2
2016	62,943	94,610	155	802	10,936	11,727	50,641	46	44.5
Source	Table 5.4	Table 3.2	Public Budget Database	Public Budget Database	Table 3.2	5.4 Disc BA	Table 4.1	DOL Budget Data	Public Budget Database

FAMILY STABILITY AND KINSHIP CARE ACT OF 2015- S. 1964

KEY POINTS:

- Support the passage of S. 1964, the Family Stability and Kinship Care Act of 2015, which funds preventative services and kinship placements for children at risk of foster placement.
- Contact members of the House of Representatives to introduce and support a companion version of S. 1964.

LEGISLATION:

Last month, Senator Wyden (D-OR) introduced the Family Stability and Kinship Care Act (S. 1964) to reform the federal finance system supporting state and tribal child welfare services.

As the law currently stands, mandatory federal funding is provided to Indian tribes and states almost exclusively after a child has already been placed in foster care. This creates a powerful incentive for tribal and state child welfare systems to place Native children in foster homes outside of their families in order to qualify for these funds. This funding scheme is problematic, as it encourages child welfare systems to forgo efforts to prevent the breakup of the family through restorative services such as parent training, mental health care, and trauma recovery programs.

There has been growing documentation of the failure of the foster system to keep our children healthy, safe, and trauma-free. The Indian Child Welfare Act notes many of these issues, and addresses them in part by mandating placement within kinship and culture before resorting to the trauma of out-of-home foster care. This provision and others like it are what have led Casey Family Programs to proclaim ICWA as the “gold standard of child welfare practice.”

Unfortunately, ICWA’s protections only apply to a certain subset of Native children, and funding is not always guaranteed to provide front-end solutions to keep Native families together. NCAI, NICWA, and a number of other national Indian and child welfare organizations have held meetings to discuss reforms to the current funding scheme and ultimately provided comments to help Senator Wyden shape his final bill.

The final bill includes a number of key provisions designed to keep at-risk children within kinship placements and to provide greater preventative and support services to the families of those children. As drafted, S. 1964 gives tribes greater flexibility and greater resources to create culturally-informed solutions for their families and greater resources to do so.

S. 1964 is a great opportunity for tribal child welfare systems to strengthen efforts to fully implement ICWA as intended, by keeping Native children in kinship and community homes. NCAI fully supports passage of the Family Stability and Kinship Care Act as a necessary piece of legislation that will improve child welfare systems for Native children, and nationwide.

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TRIBAL TRANSPORTATION

KEY POINTS:

- Support the principals of the Tribal Transportation Unity Act within the next transportation reauthorization to continue the development of tribal transportation programs.
- Support adequate funding for tribal transportation programs including: Bureau of Indian Affairs Road Maintenance; Tribal Transportation Program, and Public Transportation on Indian Reservations (Tribal Transit Grant Program)
- Support H.R.1068, Tribal Transportation Self-Governance Act of 2015, would expand self-governance programs at the Department of Transportation.

BACKGROUND:

Surface transportation in Indian Country involves thousands of miles of roads, bridges, and highways. According to the latest National Tribal Transportation Facility Inventory, 23 USC 202 (b)(1), there are over approximately 160,000 miles of roads and trails in Indian Country owned by the BIA, Indian tribes, States and Counties. However, these miles of roadways are still among the most underdeveloped and unsafe road networks in the nation, even though such routes are the primary means of access to American Indian and Alaska Native communities by tribal and non-Indian residents and visitors alike. Of the 27,500 miles of roads and trails owned by the BIA, only 7,100 miles are paved and 20,400 miles are graveled, earth or primitive. Indian tribes own 13,650 miles of roads and trails, of which only 1,000 miles are paved and 12,650 miles are gravel, earth or primitive.

LEGISLATION:

In July, Congress passed and President signed, H.R. 3236, Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (P.L. 114-41), extending the funding authority for the current transportation authorization until October 29, 2015. In addition, in July the Senate passed H.R. 22, 'Developing a Reliable and Innovative Vision for the Economy Act (DRIVE Act), the legislation includes the following: increase fund levels for Tribal Transportation Program with \$10 million step increases from \$465 million for fiscal year 2016 to \$515 million for fiscal year 2021; provision for data collection of tribal transportation programs; and tribal inclusion for national significant projects program.

Key Tribal Priorities for the Transportation Reauthorization

Transportation infrastructure development is interconnected to economic development, creating jobs, and improving living conditions and safety for individuals and families in Indian Country. Construction of transportation, public transit, highway safety and maintenance programs are crucial to providing a safe and reliable transportation network for residents of tribal communities to travel to places of work, schools, healthcare facilities, and retail establishments. It is important for the next transportation reauthorization to recognize tribal self-determination, and provide adequate funding for tribal governments to provide safe and adequate transportation system which serves our tribal communities but also the other millions of Americans who travel through our tribal lands and tribal communities every day.

H.R. 1068 – The Tribal Transportation Self-Governance Act of 2015

In February of this year, Congressman Peter A. DeFazio (D-OR) introduced H.R. 1068, the Tribal Transportation Self-Governance Act of 2015. This bill would extend self-governance programs within the U.S. Department of Transportation. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, (SAFETEA-LU), P.L. 109-59, authorized the Secretary of U.S. Department of Transportation (DOT) to have agreements directly with the Federal Highway Administration (FHWA) and Bureau of Indian Affairs (BIA) (23 U.S.C. 202 (a)). Prior to SAFETEA-LU, tribal governments had only BIA to administer their tribal transportation programs. Now, tribal governments are able to work directly with FHWA or BIA to administer the Tribal Transportation Program.

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NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT (NAHASDA)

KEY POINTS:

- Reauthorize the Native American Housing Assistance and Self-Determination Act.

BACKGROUND:

The current authorization of the Native American Housing Assistance and Self-Determination Act of 1996 expired on September 30, 2013. In the 114th Congress, Representative Pearce (D-NM) has introduced the Native American Housing Assistance and Self-Determination Act of 2015, H.R. 360. This legislation is identical to the bill that passed the House in the last Congress. In March, the U.S. House of Representatives passed H.R. 360. Also, in March Senator Barrasso (R-WY) introduced S.710, Native American Housing Assistance and Self-Determination Reauthorization Act of 2015. The Senate Committee on Indian Affairs passed S. 710 in June, and was discharged from the Senate Committee on Housing, Banking and Urban Affairs on August 5, 2015.

Housing is a core necessity for tribal communities. While tribes have made great strides toward improving housing conditions in their communities, the need for adequate, affordable housing for low-income Indian people persists. Native Americans still face some of the worst housing and living conditions in the United States. According to the U.S. Census Bureau's 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 percent lack complete plumbing facilities, 7.5 percent lack kitchen facilities, and 18.9 percent lack telephone service. Close to 30 percent of Indian homes rely on wood for their source of heat.

KEY TRIBAL PRIORITIES:

NAHASDA has become the most significant source of federal housing assistance for low-income Indian families and has succeeded in providing housing throughout Indian country. Passage of NAHASDA in 1996 signaled a shift away from federal control of housing decisions and recognition that tribal governments are best situated to design, develop and manage housing in their own communities.

Both H.R. 360 and S. 710 contain language that would meet the needs of Native Veterans by making tribes eligible to participate in the HUD-Veterans Affairs Supportive Housing Program (HUD-VASH). This program, jointly administered by both HUD and U.S. Department of Veterans Affairs program would address the needs of homeless veterans residing on tribal lands. The current HUD-VASH program does not allow for direct tribal participation. NCAI urges this Congress to reauthorize NAHASDA and include HUD-VASH in this reauthorization.

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PROTECTING VOTING RIGHTS FOR NATIVE AMERICANS

KEY POINTS:

- Support S. 1912 and S. 1659/H.R. 2867, which seek to remove long-standing barriers to voting for Native Americans.
- Ask the Senate Committee on Indian Affairs to hold a hearing on S. 1912, the Native American Voting Rights Act.

BACKGROUND:

Native Americans were the last to legally obtain the right to vote in the United States, and Native voters continue to face persistent barriers in exercising that right. Native voters often live far from established polling places and 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 white voters.

American Indian and Alaska Native voters frequently encounter five issues that Congress should address:

- Access to the Polls: The most common concern raised by Native voters is distance to election-day and early voting polling locations.
- Voter Intimidation: Every election cycle there are reports of Native voters being harassed or intimidated at the polls.
- Language Access: Many Native voters speak their indigenous language and require language assistance to vote. Some jurisdictions deny language assistance to Native voters on the grounds that the language was historically unwritten even when a written form of the language currently exists.
- Voting Rights Enforcement: There is a shortage of resources for litigation in tribal communities, and as a result, the Voting Rights Act has not been vigorously enforced in Indian Country.
- 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 for voting.

LEGISLATION:

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.

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JUVENILE JUSTICE IN INDIAN COUNTRY

KEY POINTS:

- Support Reauthorization of the Juvenile Justice and Delinquency Prevention Act.
- Support additional tribal provisions that acknowledge the unique nature of tribal justice systems, including a mandatory 10% tribal set-aside within reauthorization legislation.

BACKGROUND:

Native youth face unique issues with the juvenile justice system. Native youth are almost twice as likely to be sent to court for status offenses than their white counterparts. Once these youth engage with justice system, they are far more likely to be incarcerated than to be placed on probation for later violations. At present, the majority of youth in federal detention centers are American Indian/Alaska Native. Native youth also make up a disproportionate number of the population in state juvenile justice systems, when compared with their non-Indian counterparts. Due to geographic and economic barriers, Native youth within the juvenile justice system frequently lose contact with their families and traditions, which increases the likelihood that these youth offenders will re-offend when released.

Tribal communities tend to be underequipped to handle the issues facing their youth populations as well. Many tribal communities lack access to funding for mental health and other support services to offset the impacts of these conditions. When faced with these realities, tribes are often unable to participate in ensuring the health and welfare of their youth populations. While tribes are typically better situated to offer culturally appropriate alternatives to incarceration, many tribes lack the ability to financially support the infrastructure needed to deter and rehabilitate juvenile offenders.

Key Tribal Priorities for Juvenile Justice Reauthorization

Both the House and the Senate have introduced bills reauthorizing the Juvenile Justice and Delinquency Prevention Act (S. 1169 and H.R. 2728). In addition to broadening the pool of Indian tribes covered under the Act, the proposed legislation improves juvenile justice systems by removing youth from adult jails; keeping non-violent youth offenders from confinement; separating youth and adult offenders in lock-ups or jail; and, reducing the disproportionate rates of minority involvement with the juvenile justice system. NCAI supports the reauthorization of the JJDPDA, but would urge inclusion of additional tribal provisions.

In reauthorizing the JJDPDA, it is important that tribes are not left behind. Under current law and the proposed legislation, tribes are treated as local governments that must look to states as the party responsible for allocating and administering juvenile justice funds. This method of allocation has not been favorable to tribes. It is therefore important that tribes receive a mandatory 10% set-aside under the reauthorization to support juvenile justice infrastructures unique to tribal peoples. The immediate costs of building up Native juvenile justice systems with the tools needed to implement culturally sensitive juvenile justice solutions pale in comparison with the long term costs of incarcerating habitual juvenile offenders into adulthood. Congress must take this into account when considering any JJDPDA reauthorization bill.

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TRIBAL TAX INITIATIVES

The last national tax reform occurred just under 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 authority to provide government revenue for tribal programs independent of federal appropriations and encourage economic growth on tribal lands.

Last year, the 113th Congress enacted the Tribal General Welfare Exclusion Act of 2014 in a demonstration of collaboration between Native nations and Congress. The Act responded to the taxation of certain governmental services provided to, or on behalf of, the tribe or its members. With the passage of the Act, Indian general welfare services provided by tribal government programs are no longer subject to taxation as gross income.

The Tribal General Welfare Exclusion Act is just the beginning of a larger effort to overhaul tribal taxation infrastructure and bolster tribal economies. Reliable funding sources have been few and far between for every tribal government service for decades. Congress must continue to actively engage with Native nations to achieve tribal tax reform in a comprehensive manner.

Tax Initiatives to Restore Tribal Economies and Support Tribal Communities

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, 2014, and should be reenacted as soon as possible and on a permanent basis.

Achieve tax parity for Tribal Governments. Members of Congress and Indian tribes have identified a significant number of provisions where tribes are unable to utilize the Tax Code in the same manner as state and local governments. NCAI strongly urges parity in these areas:

- *Tribal government tax-exempt bonds.* Currently, tribes may only use tax-exempt bonds for "essential government functions." The IRS has interpreted this in a way to exclude economic development as a governmental function, while state and local governments frequently use tax exempt financing for revitalization projects. This unnecessarily prevents tribes from securing the funding needed to revitalize their communities.
- *Tribal government pension plans.* Tribal governments currently must provide both government and private ERISA pension plans to their employees. This largely depends on whether the employee works for the tribal government or for a tribal enterprise. 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.* Tribally-created foundations and charities do not enjoy the same tax-exempt status that state-created foundations and charities enjoy. This creates an uncertain atmosphere for potential benefactors seeking to maintain their tax-exempt status. In order for tribal foundations and charities to thrive, it is necessary for benefactors to feel unencumbered to make contributions without potential tax penalties.

- *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, the tax code should be amended to allow tribal child support enforcement agencies to enforce orders for support through the authority to withhold past due child support payment from the federal income tax returns of parents with past due obligations.
- *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.
- *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.
- *Tax credits granted to doctors employed by Indian Health Service facilities.* Tax credits are available to doctors employed in other areas of the public sector, but are 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.

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 included tribes within last year’s version of S. 743, and NCAI is optimistic the legislation will be considered again this year.

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.

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HEALTHCARE

EXEMPTION FROM THE AFFORDABLE CARE ACT'S EMPLOYER SHARED RESPONSIBILITY MANDATE

KEY POINTS:

- Support S. 1771 and H.R. 3080, the Tribal Employment and Jobs Protection Act.
- The Employer Shared Responsibility Mandate requires tribal employers to offer health insurance coverage to full-time employees and their dependents or pay costly penalties.
- Tribal employers should not be required to pay costly premiums to provide health insurance to American Indian/Alaska Native (AI/AN) employees when the federal government has a trust responsibility to provide health care at no cost to AI/AN and because AI/AN are exempt from the individual mandate.
- Requiring tribal employers to purchase insurance or pay penalties is essentially subsidizing the federal government from its trust responsibility to provide health care to AI/AN.

BACKGROUND:

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 (transition relief is available for employers with 50-99 FT/FTE). 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 AI/AN 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.

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 AI/AN. 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 AI/AN 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% 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 \$2,084 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 \$3,126 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 AI/AN.

LEGISLATION:

In July, Senator Daines (R-MT) and Congresswoman Noem (R-SD) introduced companion bills entitled the "Tribal Employment and Jobs Protection Act" (S. 1771 and H.R. 3080). This legislation amends the Internal Revenue Code to exclude tribal employers from the definition of "applicable large employer" for purposes of the employer health care mandate under the Affordable Care Act. In this legislation a "tribal employers" is defined as (1) any Indian tribal government or subdivision, (2) any tribal organization, or (3) any corporation or partnership if more than 50% of the equity interest of such an entity is owned by an Indian tribal government or tribal organization.

For more information, please contact Legislative Associate, Laura Bird, at lbird@ncai.org.

SUPPORT S. 438- THE IRRIGATE ACT TO FUND NECESSARY MAINTENANCE ON INDIAN WATER PROJECTS

KEY POINTS:

- Many Indian irrigation and water projects in the West are experiencing severe funding shortages forcing necessary maintenance to be deferred, affecting access to potable water and economic development.
- The United States must live up to its trust responsibility and provide the necessary funding and support for Indian water projects.
- Support S. 438 which creates a Reclamation Rural Water Construction and Settlement Implementation Fund to support 16 Indian irrigation projects in the West.

BACKGROUND:

In the late 1800s and early 1900s, as part of its trust responsibility, the federal government constructed a number of Indian irrigation projects to deliver water to tribes and individual Indians engaged in agriculture. Despite its ongoing responsibility to administer and maintain these Indian irrigation projects, the Bureau of Indian Affairs has yet to ensure that regular and routine maintenance of is performed on these projects, resulting in a deterioration of tribal and individual Indian trust resources. Further, a 2006 study by the federal Government Accountability Office estimated that the total cost of backlogged and deferred maintenance required to bring 16 Indian irrigation projects in the western United States back to functional condition equaled \$850 million. The lack of funding has a human cost as well, as a number of Indian tribes have incomplete or unbuilt drinking water projects to serve their people, leaving residents of these reservations to suffer due to the lack of potable water. Limited access to water also stymies economic develop and growth.

Congress must pass legislation to include a funding mechanism for Indian irrigation and water delivery projects as well as the implementation of Indian water rights settlements. Taking no action will continue to allow Indian irrigation projects to deteriorate. The costs to the United States of their unmet maintenance, repair and replacement needs will continue to increase, tribes and tribal members will continue to suffer from poor or non-existent delivery of water, and settlements of Indian water rights will continue to languish.

LEGISLATION:

S. 438 – THE 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. This bill creates a fund at the U.S. Department of Treasury called the “Reclamation Rural Water Construction and Settlement Implementation Fund” funded in the amount of \$150 million annually. 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. S. 438 is ready for Senate floor consideration.

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