

National Congress of
American Indians

Policy Update



*2017 Mid Year
Conference*

Uncasville, CT

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POLICY OVERVIEW

January of 2017 marked the beginning of the Trump Administration and the 115th Congress and the first time both the Congress and the White House have been Republican-controlled in a decade. Presidential transitions always have an impact on policy, not only in the Administration but also in the Congress, as early legislative priorities are often centered on action around the President's goals for the first 100 days in office. This has been the case as most of the major policy initiatives have centered on priorities put forth by the President during the campaign and in filling key Cabinet positions.

During the first six months of this year, the Senate was charged with confirmation of the Cabinet Secretaries. As of April 28th, all of the Secretaries were confirmed, and the Senate is now working on confirming the second-tier appointments, such as the Deputy Secretary positions. Just last week, the Senate Energy and Commerce Committee voted favorably on the nomination of David Bernhard to serve as Deputy Secretary of the Department of the Interior and that nomination is now ready for consideration by the full Senate. To date, there has been no nomination of an Assistance Secretary – Indian Affairs.

The work of Congress and the Administration to date have focused on top level priorities such as repeal and replacement of the Affordable Care Act, Tax Reform, and Infrastructure. In April of this year, the House passed the American Health Care Act which is the first step in the repeal of the Affordable Care Act. The Senate is currently working on its version of a replacement bill with the goal of having a Senate vote prior to the July 4th recess. To date, the Indian Health Care Improvement Act is retained in both the House and Senate versions of the bill, but Indian Country would be significantly affected by any rollback of Medicaid benefits, with over 490 of the 567 federally recognized tribes located in Medicaid expansion states.

Congress is also actively working on what tax reform legislation could look like and the President is expected to begin rolling out his plans for infrastructure. NCAI and our partners have been actively involved in these discussions with both Congress and the Administration to ensure that tribal governments have parity in any legislation that may move this year.

The President's budget was released on May 23rd and in contained proposals that, if enacted, would result in significant cuts in agencies and programs that serve tribal communities, including a 13% decrease in Department of the Interior funding, 6% decrease for the Indian Health Service, and a 31% cut to funding for the Environmental Protection Agency. While the President's budget is just a guide for Congress, we will need to continue to reinforce the treaty and trust obligations towards tribes and the reasons tribal funding differs from other programs.

It is important early in an Administration and Congress for Indian Country to have consistent advocacy and education around these and other issues of important to tribal communities. It takes all of us – NCAI, our regional partners, issue organizations and tribal leaders to provide sustained advocacy so we can ensure that our voice is heard on important issues. At NCAI we thank you all for your continued partnership and support as we create opportunities for tribes in federal policy.

LAND AND NATURAL RESOURCES

We as Tribal Nations and Tribal citizens are place-based peoples with a direct connection to our surrounding environments, our homelands lands, waters, natural resources, and wildlife. Tribes' cultures, traditions, lifestyles, communities, foods, and economies are all dependent upon many natural resources. The restoration, protection, and use of our lands and natural resources must be done in a tribally driven fashion to ensure that it meets needs of Tribal citizens, while respecting our traditional and cultural values.

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

Many natural resources disappearing faster than they can be restored based on the realities of climate change impacts on tribal lands. Tribes are disproportionately impacted by climate change due to our geographical locations and our direct connection to our surrounding environments. Native peoples who rely heavily on the cultural and subsistence practices of their ancestors to survive are particularly hard hit.

Climate change poses threats not only to the health and food supply of Native peoples, but also to their traditional ways of life. The natural ecosystems, biodiversity, traditional plant gathering times, and animal migration patterns we have relied on since time immemorial are all fluctuating. Many Alaska Native villages are experiencing accelerated sea level rise, erosion, permafrost thaw, and intense weather events making the relocation of entire villages inevitable. In the West and Southwest, many Tribes are experiencing prolonged drought reducing their water resources and increasing the severity and costs of wildfires. Milder winters in the Northeast have sparked a surge in Lyme disease-carrying deer ticks, while lobster and clams are suffering shell disease linked to the acidification of coastal waters.

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

RESTORE TRIBAL HOMELANDS – THE INDIAN REORGANIZATION ACT

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 *Carciere 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 *Carciere* 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 *Carciere* decision has created jurisdictional uncertainty that is hindering economic development opportunities, business financing, contracts, and loans. The decision has further complicated the uncertainties of criminal jurisdiction in Indian Country such that it has worsened the public safety crisis prevailing on many Indian reservations across the country as well as drawing into question the validity of past federal and tribal court convictions. The decision also threatens to block or delay important land acquisitions for schools, housing, health clinics, essential tribal government infrastructure projects, and the protection of sacred sites.

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

Legislative Update

In the House of Representatives, Representatives Tom Cole (R-OK) and Betty McCollum (D-MI) have re-introduced two pieces of legislation. H.R. 130 was introduced on January 3rd, and would reaffirm federal authority to acquire lands in trust for all federally recognized tribes. In addition, they have also introduced H.R. 131, which would reaffirm lands already in trust.

The Indian Reorganization Act was also the topic of a May 24, 2017, hearing in the House Natural Resources Subcommittee on Oversight and Investigations entitled, "Examining Impacts of Federal Natural Resources Laws Gone Astray."

NCAI will continue to advocate for the restoration of tribal homelands, both in Congress and the Administration.

LAND & NATURAL RESOURCES

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Legislative Update

Public Land Transfers to State and Private Ownership. One major issue which has come up early in the 115th Congress is the transfer of federal lands to state and private ownership. An early bill that was introduced by Representative Jason Chaffetz (R-UT), H.R. 621 – Disposal of Excess Federal Lands Act of 2017, aimed to sell over 3.3 million acres of federal lands currently managed by the Bureau of Land Management (BLM) in 10 states: Arizona, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, and Wyoming. With strong opposition to the Bill from sportsmen groups, Rep. Chaffetz stated that he would withdraw the legislation. Protecting federal lands is important for tribes as many contain ancestral lands, hunting, fishing, and gathering rights, cultural resources, or sacred places. While this particular legislation may not be acted on, there is a likelihood that this issue will continue to arise in the 115th Congress. NCAI is monitoring legislation and working with tribal leaders to identify any potentially harmful legislation and also looking to see what opportunities may be available to tribes to have lands returned.

H.R. 200 – Magnuson-Stevens Fishery Conservation and Management Act Reauthorization. In the 114th Congress, the House of Representatives passed a reauthorization of the Magnuson-Stevens Fisheries Conservation Act (MSA) along divided party lines and it was never taken up in the Senate. The bill was a \$1.5 billion, 5 year

reauthorization, and included many changes to MSA, such as: loosening the 10 year time frame for rebuilding overfished/depleted fisheries and the standards used to determine the time frame; changes to the Annual Catch Limits allowing more flexibility in raising the limits; allowing the North Pacific Council to change the harvest limitation under the American Fisheries Act; and requiring the Governor of each applicable state to consult with subsistence fishing representatives before submitting a list of potential Fisheries Councils nominees to the Secretary of Commerce.

This legislation was reintroduced by Rep. Don (R-AK) and is H.R. 200 - Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act in the 115th Congress.

There are many needed changes and amendments to incorporate American Indians and Alaska Natives in the decision making processes, as well as a need for improved practices to protect the health of our fish resources. Despite being charged with upholding fishing treaty rights of Northwest tribes and the right to fish of Alaska tribes, the management of the North Pacific Fishery Management Council fails to consider the needs of American Indian and Alaska Native people. The structure of the Council prevents tribes from participating as part of the decision making process and engages in a flawed single-species based management system which does not consider the food web dynamics, fishing gear impacts, and non-target species taken as bycatch which has resulted in the overfishing of one-third of the nation's fish stocks.

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

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

Wildfire Disaster Funding Legislation. One issue that has yet to see any legislation, but likely will in the 115th Congress, is the longstanding issue of funding how wildfires are funded in the budget process. Last Congress, Senator Wyden (D-OR) and Representative Simpson (R-ID) introduced companion bills to address many issues with funding wildfire suppression. Specifically they address the problematic way in which appropriated sums are often insufficient to cover the large and unpredictable costs of wildfires. As a result fire suppression funds must often be "borrowed" from regular federal forest management programs. Repayment is always late and often partial, disrupting and diminishing those programs' effectiveness. Many times, this comes at the expense of tribal forestry programs and tribal forests.

NCAI supports legislative to have federal wildland fire costs that exceed 70 percent of the ten-year average paid from federal disaster assistance accounts. Such authority would allow the large, unpredictable, and often unbudgeted costs of fighting wildland fires to be treated the same as other natural disasters, and would provide more budgetary stability to regular on-going federal forest management programs. This approach garnered substantial bipartisan support from the 114th Congress and the previous Administration.

Also last Congress, Senators Lisa Murkowski (R-AK), Maria Cantwell (D-WA), Ron Wyden (D-OR), Mike Crapo (R-ID), and Jim Risch (R-ID) released a draft bill entitled Wildfire Budgeting, Response, and Forest Management Act. The draft bill includes a similar cap adjustment to end borrowing fire suppression funds from other programs, but includes additional measures. Among other things, the draft bill will: end fire borrowing by Forest Service and the Department of the Interior to enabling a transfer of limited funds through a budget cap adjustment when all appropriated suppression funding (100% of the 10-year average) has been exhausted; reduce wildfire suppression costs over time; build on existing Healthy Forests Restoration Act authorities; accelerate needed hazardous fuel reduction work in forest types most susceptible to megafires by providing alternative arrangements for project approvals; require the Forest Service inventory of young growth in the Tongass National Forest before finalizing any forest management plan amendment; and authorize \$500 million over seven years to provide assistance to at-risk communities to invest in proven programs that reduce wildfire risk, property loss, and suppression costs. This legislation has yet to be introduced.

TRUST MODERNIZATION

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

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

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

Administrative Update

Indian Trust Asset Reform Act Implementation – Public Law 114-178. On June 22, 2016, the Indian Trust Asset Reform Act (ITARA) was signed into law, representing an important 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. The trust asset demonstration project created by the law provides tribes 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. It 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, ITARA addresses 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. The Secretary of the Department of the Interior is required 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.

Finally, ITARA allows the Secretary of the Interior to appoint an Under Secretary for Indian Affairs at the Department of the Interior. Under the existing structure, there is no single executive within the Office of the Secretary that is focused on Indian affairs *and* that possesses authority over the non-Indian agencies and bureaus in the Department. The Under Secretary is intended to fill this void. Among other duties, the Under Secretary would “to the maximum extent practicable, supervise and coordinate activities and policies” of the Bureau of Indian Affairs (BIA) with activities and policies of non-BIA agencies and bureaus within the Department. The Under Secretary is intended to serve as a cross-agency advocate for Indian Country within the Department and ensure that non-Indian agencies and bureaus within the Department do not implement policies that negatively affect tribes and beneficiaries.

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

At the end of the 114th Congress, the Senate Committee on Indian Affairs held an oversight hearing on “Examining the Department of the Interior’s Land Buy-Back Program for Tribal Nations, Four Years Later” to review progress and future of the program. Department of the Interior Deputy Secretary Mike Connor testified that while the program is making a substantial difference in Indian Country, the Program will run out of money in 2022. This will leave more than 4 million purchasable fractionated acres. Deputy Secretary Connor, and the two Tribal leaders on the panel, recommended that the program be extended and even made permanent.

On Tuesday, May 23rd, 2017, the House Natural Resources Committee, Subcommittee on Indian, Insular and Alaska Native Affairs, held an Oversight Hearing on the Status and Future of the Cobell Land Consolidation Program. The hearing has only one witness, Mr. James Cason, Acting Deputy Secretary for the Department of Interior. The purpose of the hearing was to examine the progress to date on the \$1.9 billion Buy Back program established under the Cobell settlement for consolidation of fractional interests in Indian lands.

Mr. Cason’s testimony indicated his concerns that land continues to fractionate even as the federal government has spent nearly \$1 billion attempting to reduce fractionation through the program. His testimony urged Congress to consider placing the remainder of the Buy Back funds into a revolving account where the land would not go back to Indian tribes, but would be held by the United States to produce income for the purchase of further fractionated lands. Although his testimony noted the enormous collective advantages of the settlement across Indian Country, including the restoration of land productivity, it also raised the prospect of focusing land buy back on only a few reservations with the lowest land values, to maximize the purchasing power.

NCAI is looking to work with the new Administration and 115th Congress to ensure the *Cobell* settlement and land buy-back program are being implemented fairly and in accordance with the approved settlement, and to continue land consolidation programs at the Department of the Interior.

ENERGY

Tribal energy resources are vast, largely untapped, and critical to America’s efforts to achieve energy security and independence, reduce greenhouse gases, and promote economic development. Energy infrastructure is also integral to many Tribes’ efforts to create jobs, infrastructure, and improve lives of their citizens. Empowering Tribal energy development can yield strong results not only for Tribes, but also for rural America. 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 of the total U.S. electricity demand, and tribal solar resources could generate twice the total amount of energy needed to power the country.

However, developing energy resources in Indian Country continues to be a challenge. Tribes face barriers to energy development which do not exist elsewhere, and often are excluded from the commercial-scale project development. Cumbersome bureaucratic processes, disincentives for Tribal financing, lack of access to transmission and the energy grid, 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 continue to hold Tribal energy production back.

Since the last major update to Indian energy policy was 10 years ago, NCAI urges Congress and the Administration to work with tribes to put tribes in control of developing their energy resources to bolster tribal self-determination and help create careers and capital in Indian Country.

Legislative Update

S. 245 – Indian Tribal Energy Development and Self-Determination Act of 2015. On January 30, 2017, Senator Hoeven (R-ND) reintroduced longstanding legislation to provide tribes with greater control and flexibility to develop their traditional and renewable energy resources and streamline many of the burdensome processes tribes persistently face. The current bill is identical to the version passed out of the Senate Committee on Indian Affairs in the 114th Congress, and passed in both the House and Senate in their respective energy legislation. The bill includes additional consultation requirements for the Department of the Interior; improves the Tribal Energy Resource Agreements process in the Energy Policy Act of 2005 by recognizing tribal self-determination over energy resources; creates a process for approving Tribal Energy Development Organizations; expands direct access to the Department of Energy’s Weatherization Program; supports American Indian and Alaska Native biomass demonstration projects; and amends the appraisal and right-of-way approval processes.

NCAI sent a letter to the Senate Committee on Indian Affairs expressing our longstanding support for this legislation, and the need to update Indian energy legislation to improve tribally driven energy development on tribal lands.

H.R. 210 – The Native American Energy Act of 2017. In the House of Representatives, Congressman Young (R-AK) introduced H.R. 210, the Native American Energy Act of 2017. This legislation maintains the major focus of removing regulatory hurdles to tribal energy development and is similar to legislation the House of Representatives passed in the 114th Congress as part of their large-scale energy legislation. This bill 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, except for federal actions related to the Indian Gaming Regulatory Act; support tribal biomass demonstration projects; consider all tribal resource management plans as sustainable management practices; and creates a Tribal Forest Management Demonstration Project under the Tribal Forest Protection Act at the U.S. Forest Service

AGRICULTURE & NUTRITION

Agriculture is a major economic, employment, and nutrition sector in Indian Country. In 2012, there were at least 56,092 American Indian-operated farms and ranches on more than 57 million acres of land. These farms and ranches sold \$3.3 billion of agricultural products, including more than \$1.4 billion of crops and \$1.8 billion of livestock and poultry. Additionally, the 2007 Census of Agriculture Fact Sheet notes that, “American Indian farm operators are more likely than their counterparts nationwide to report farming as their primary occupation . . . to derive a larger portion of their overall income from farming . . . [and] to own all of the land that they operate.” As a result of the huge agricultural footprint across Indian Country and the fact

that more than 35 percent of American Indian and Alaska Native peoples live in rural communities, tribal governments and farmers look to active partnerships throughout the U.S. Department of Agriculture to sustain and advance common interests across the broad array of services that this federal agency provides to tribal governments.

With 24 percent of American Indian and Alaska Native households receiving Supplemental Nutrition Assistance Program (SNAP) benefits, 276 tribes administering the Food Distribution Program on Indian Reservations (FDPIR), 68 percent of American Indian and Alaska Native children qualifying for free and reduced price lunches, and American Indians and Alaska Natives making up more than 12 percent of the participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) the importance of food assistance in Indian Country cannot be overstated. Any cuts to SNAP, FDPIR, WIC, or school lunch programs directly diminish the food, and in some cases the only meals, available to Native children, pregnant women, elders, and veterans. No one, especially our tribal citizens most in need, should ever have to go without food. Additionally, food assistance programs like FDPIR must be provided the means and support to purchase traditional, locally-grown food in their food packages. Traditional and locally-grow foods from Native American farmers, ranchers, and producers encourages healthy living, cultural sustainability, and a return to traditional practices all while supporting economic development. Below is a look at the agriculture and nutrition policies that will be a focal point with the new 115th Congress, including the reauthorization of the Farm Bill which expires in September 2018.

Legislative Update

2018 Farm Bill – Gearing Up for the Next Reauthorization. In February 2014, Congress passed the Agriculture Act of 2014 (H.R. 2642; Pub. L. 113–79) reauthorizing the U.S. Department of Agriculture’s programs through 2018. This law brought forth many new changes and improvements for Tribal Nations and Native farmers and ranchers. The 115th Congress will begin looking at the Farm Bill programs for the 2018 reauthorization, providing Indian Country has an important opportunity to review the past requests and successes, and develop its priorities early for the upcoming reauthorization. It is imperative that Tribal Nations and Native agriculture producers have a seat at the table during these early discussions to improve the efficiency and effectiveness of agriculture and nutrition programs in Indian Country, while supporting Tribal food and agriculture businesses.

The source of a majority of the issues in the 2014 Farm Bill steamed from the Nutrition Title, which accounts for 79 percent of the total funding for the entire law. Despite cutting funding in Title IV by \$8.6 billion, some Members of Congress were looking to cut as much as \$20 billion dollars and were even looking at removing the Nutrition Title from the bill entirely. Federal food assistance programs have been included in the Farm Bill since 1973 as a means to get the support of both rural and urban Members of Congress, since both were difficult to pass on their own. With as nearly 24 percent of American Indian and Alaska Native households receive Supplemental Nutrition Assistance Program (SNAP) benefits, and 276 tribes administer the Food Distribution Program on Indian Reservations (FDPIR) commodity food program, protecting and improving Title IV will be incredibly important in the 2018 Farm Bill.

Reauthorization of the Healthy Hunger-Free Kids Act of 2010 (Child Nutrition Reauthorization). The Healthy Hunger-Free Kids Act of 2010 is a 5-year bill that governs several food programs that impact Native children and parents: the National School Lunch and School Breakfast Programs; the Child and Adult Care Food Program;

the Summer Food Service Program; the Afterschool Snack and Meal Program; the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC); the WIC Farmers Market Nutrition Program; the Fresh Fruit and Vegetable Program; and the Special Milk Program. As was seen in the Farm Bill debate, nutrition standards, costs, and program eligibility will continue to be at the forefront of the Child Nutrition Reauthorization. Since the 114th Congress was not able to pass a reauthorization—the programs still continue on without reauthorization—the Senate Committee on Agriculture and House Committee on Education and the Workforce, the two Committees with jurisdiction, will look to continue the work from last Congress to make changes to the law. NCAI is working with many major nutrition policy groups and our tribal organization partners to make sure Indian Country’s priorities are included in the Reauthorization.

Administrative Update

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

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

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

On December 2, 2014, the court held a status conference and Ms. Keepseagle was allowed to voice her concerns about the creation of a trust. The Judge saw this as a brief for relief and informed Ms. Keepseagle that she could retain counsel and submit a motion making the legal argument to reopen the settlement for an additional round of payments. In May 2015, the Court requested briefs regarding the claims of Ms. Keepseagle’s motion for relief asking for the remaining funds to be dispersed among the claimants. On July 24, 2015, the Court denied both motions to modify the settlement agree proposed. The first motion filed by Ms. Keepseagle would have allowed for the distribution of additional funds to prevailing claimants or re-open the claims process.

USDA objected to this motion and the Court decided there was no legal basis for going against the Agency's objection. The Court then denied the Plaintiff's motion to create a Trust to supervise the distribution of the *cy pres* funds to non-profits, ruling that all class representatives, including Ms. Keepseagle, would have to agree on any changes to the settlement agreement.

All parties with standing in the case reached an agreement on changes to the existing settlement agreement. Under the new proposal, each prevailing claimant will receive a supplemental payment of \$18,500 (a separate sum of \$2,775 will be paid to the IRS on their behalf). The remainder of the *cy pres* funds would go to non-profit organizations as described above. The Court held a hearing on this new agreement to modify the settlement on February 4, 2016. The Court approved the new agreement on April 20, 2016. An appeal of the modified settlement was filed on June 20, 2016, and class counsel hopes that the appeal will be ruled on by June 2017. On May 17, 2016, the class counsel in *Keepseagle* case announced a one-time distribution of \$38 million from the remaining settlement funds through the Native American Agricultural Fast Track Fund (NAAFTF). This will be the first distribution of \$380 million left in the *Keepseagle cy pres* fund for the benefit of Native American farming and ranching.

PUBLIC SAFETY

Public safety is slowly improving in Indian country as the result of strong efforts from Congress, tribal leadership, and victims' advocates. However, problems remain as a result of decades of gross underfunding for tribal criminal justice systems; a uniquely complex jurisdictional scheme; and a centuries-old failure by the federal government to fulfill its public safety obligations on tribal lands. Residents and visitors on tribal lands deserve safety and security. Congress has taken historic steps in recent years with the passage of the Tribal Law and Order Act in 2010 and the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) to begin to address some of the structural barriers to public safety in tribal communities. For the promise of these laws to be fully realized, however, they must be fully implemented. Implementation cannot occur without sufficient resources for tribal justice systems.

VIOLENCE AGAINST WOMEN ACT IMPLEMENTATION

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

In the nearly four years since VAWA 2013 was enacted, a group of 45 tribes have been participating in the Inter-Tribal Technical Assistance Working Group (ITWG) established by DOJ, which is a collaboration of tribes sharing information and advice on how to best implement VAWA, combat domestic violence, recognize victims' rights and safety needs, and safeguard defendants' rights. As of January, 2017 we are aware of 13 tribes who have implemented VAWA. They are: the Tulalip Tribes, the Pascua Yaqui Tribe, the Confederated Tribes of the Umatilla Reservation, the Assiniboine & Sioux Tribes of the Ft. Peck Reservation, the Sisseton Wahpeton Oyate, the Seminole Nation of OK, the Eastern Band of Cherokee Indians, the Nottawaseppi Huron Band of Potawatomi, the Kickapoo Tribe of OK, the Sac and Fox Nation of OK, the Little Traverse Bay Band of Odawa Indians, the Standing Rock Sioux Tribe, and the Sault Sainte Marie Tribe of Chippewa Indians. The implementing tribes report that the majority of the cases so far involve children as witnesses or victims and that the offenders frequently have a history of frequent prior police contacts. Materials from the implementing tribes are available on NCAI's website and offer useful examples of how individual tribes have modified tribal code language and constructed jury pools for VAWA cases.

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

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

Legislative Update

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

Tribal Youth & Community Protection Act. Senators Tester and Franken introduced a bill in the last Congress, S. 2785, the Tribal Youth & Community Protection Act, which would expand tribal jurisdiction over non-Indians to fill many of these gaps. Similarly, Senators Franken and Murkowski introduced a bill last year that would have added sexual assault, stalking, and sex trafficking to the list of crimes covered by the VAWA tribal jurisdiction provision.

Administrative Update

Intertribal Technical-Assistance Working Group Recommendations. The tribes participating in the ITWG have also identified a number of issues related to VAWA implementation that require Administrative action. In particular, tribes have asked for guidance about the provision of health care to non-Indian inmates. In addition, tribes are seeking full and effective access to the National Crime Information Center databases. The Department of Justice's recent expansion of the Tribal Access Program to additional tribes is a positive step. NCAI will continue to urge full participation for all tribes.

VICTIMS OF CRIME ACT FUNDING

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

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

The CVF was established by the Victims of Crime Act in 1984. Congress created the CVF based on the idea that money which the government collects from criminals should be used to help those victimized by crime.

Fines paid by convicted federal criminal offenders finance the Fund, not taxpayer dollars. Despite significant increases in collections, Congress has imposed a cap on how much is available from the CVF for crime victim services and compensation for the past 15 years. In recent years, distributions from the CVF have been about \$700 million. Collections, however, reached as high as \$2.8 billion in 2013, leaving a balance in the fund of about \$13 billion. There has been significant pressure on Congress to make this money available for crime victims, and Congress significantly increased the distributions for FY 2015 to \$2.3 billion, and again in FY 2016 to \$2.3 billion.

Unlike state and territorial governments who receive an annual formula distribution from the CVF, Indian tribes are only able to access CVF funds in one of two ways: 1) via pass-through grants from the states, or 2) by applying for a very limited number of short-term competitive, discretionary grants from the Department of Justice. In practice, pass-through funding has proven wholly unsuccessful in distributing funds to tribal victim service providers. The vast majority of tribal victim service programs report that they are not able to access these funds at all. DOJ's competitive funding process is also problematic. All federally-recognized tribes compete with each other for a very small amount of funding. Because grants are limited to a three-year duration, this process also greatly hinders development of tribal victim service programs. Often when a grant ends, tribal programs must completely shut down.

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

Legislative Update

Victims of Crime Act. Without additional action by Congress, tribal governments will continue to have no direct access to critical CVF funds. Congress could remedy the exclusion of tribal governments by passing authorizing language that amends the Victims of Crime Act or through the appropriations process. Both the House and Senate Appropriations Committees adopted amendments to their respective Crime Justice and Science appropriations bills last year that would have included a 5% allocation for tribal governments out of the overall disbursement from the CVF, which would have resulted in up to \$140 million for tribal governments. Unfortunately, this funding was not included in the Omnibus Appropriations bill that was adopted for FY17. The President's budget request for FY 2018 includes a 5% allocation for tribal governments from the CVF, and NCAI is working to continue to push for this critical funding as appropriations are finalized for FY 2018.

SURVIVE Act. In July of 2015, a bi-partisan group of Senators introduced S. 1704, the SURVIVE Act, which would direct 5% of the total CVF disbursement to tribal governments. The Senate Committee on Indian Affairs unanimously approved the bill at a mark-up in July of 2015. NCAI will continue to work with Congress to develop and advance amendments to the Victims of Crime Act that will ensure adequate funding for tribal communities.

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

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

The reauthorization of the TLOA should also serve as a vehicle for improvements to the Juvenile Justice system. Many Members of Congress have identified youth justice as a top priority, and Indian Country fully agrees. The Indian Law and Order Commission's "Roadmap for Making Native America Safer" discussed the disturbing reality that American Indian youth face disproportionate exposure to violence and poverty. At present, the *majority* of youth in federal detention centers are Native youth, who also make up a disproportionate percentage of the state juvenile detention population. According to the ILOC Report, youth are placed in "generally unsafe, abusive, ineffective, and horribly expensive" situations that push them further into a life of crime. It is necessary for tribal juvenile justice systems to be able to develop alternatives to incarceration aimed at rehabilitation and treatment. We also recommend the development of tribal juvenile data collection, preventative family services, and a requirement that states notify tribes when tribal youth are in state delinquency proceedings.

The TLOA was also a vehicle for a series of important technical improvements to the federal criminal justice laws in Indian Country. Tribal justice systems now have nearly seven years of experience with implementing the law, and that implementation has led to proposals to continue to improve the law.

Specifically, we ask that Congress reauthorize and make permanent the *Bureau of Prisons Tribal Prisoner Pilot program*, which expired on November 24, 2014. The Pilot Program created the option to send highly violent offenders to federal corrections facilities. Many tribes do not have the resources or personnel to adequately and safely house these types of offenders. The federal system also offers greater access to treatment, rehabilitation, and reentry programs.

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

Legislative Update

Reauthorization of Tribal Law and Order Act. Last year, former Senate Committee on Indian Affairs Chairman Barrasso (R-WY) introduced S. 2920, a bill to reauthorize the Tribal Law and Order Act (TLOA) of 2010. This legislation was reported out of the Committee in June of 2016, but did not receive a vote by the full Senate. We are hopeful that a new version will be introduced this year, with even more improvements for Indian country public safety.

Last year's bill would have taken very positive steps and extended the BOP Pilot Project, required consultation with tribes regarding the integration of diverse funding sources for law enforcement, addressed criminal trespass, and required notice to tribes when a member youth enters a state or local justice system, among a number of other important provisions.

The Juvenile Justice and Delinquency Prevention Act (JJDP A) is currently up for reauthorization. One bill, H.R. 1809, was recently approved by the House. A companion bill, S. 860, has been passed out of committee and is awaiting a floor vote in the Senate. Both of these bills include significant reforms aimed at reducing the reliance on incarceration and improving outcomes for youth in the justice system. NCAI has expressed concerns that several of our priorities relating to Native youth that are included in the TLOA reauthorization bill discussed above have not been included in the JJDP A reauthorization bills.

Specifically, NCAI has prioritized the inclusion of a provision that would let the tribes know when Native youth come into contact with, or leave, state or local justice systems, and allow access for tribes to school attendance and disciplinary records for their members. State courts are currently required to notify tribes of proceedings involving tribal juveniles who have committed status offenses, but not delinquency proceedings. NCAI has also asked for language to ensure that culturally relevant, trauma-informed assessments and care are incorporated as a standard in juvenile justice systems. Additional recommendations would require states to engage in meaningful consultation with tribes on shaping juvenile justice and would allow federal authorities to defer to tribal jurisdiction in matters involving tribal youth, as they are currently authorized to do with respect to states and territories.

NCAI has suggested additions to continue to improve public safety, including a proposal to allow tribes to consolidate available law enforcement funding, to improve declination reporting, and eliminate the requirement of "Indian" status for the Major Crimes Act.

EMERGENCY RESPONSE/HOMELAND SECURITY

Tribal leaders and the NCAI continue to advocate for parity in protecting the homeland. Since 2003, 98.75% of total Department of Homeland Security (DHS) funding has gone to state and local governments (\$40 billion vs. \$50 million). The Department of Homeland Security and its component departments, such as Customs and Border Protection, the Federal Emergency Management Agency (FEMA), and Transportation Security Administration have had mixed reviews from tribal officials in the past year regarding meaningful consultation and collaboration, upholding the federal trust responsibility in program service delivery with tribal nations, and approaches to federal grant funding through states that has been detrimental to tribal-federal government relations and tribal sovereignty. Considering DHS was only established in 2003, and in this final year before transition to a

new administration, there is needed positive change to address tribal homeland security and emergency management matters regarding border crossing and tribal IDs, disaster declaration authority, emergency management capacity building, and equitable yet realistic levels of grant access and funding.

Administrative Update

Executive Order 13767: Border Security and Immigration Enforcement Improvements. Directs the Secretary of Homeland Security (DHS) to plan, design, and construct a physical wall along the southern border; construct detention facilities to detail unlawful aliens at or near the border; hire 5,000 border patrol agents and assign them to duty stations; and set up federal-state agreements for state and local law enforcement officers to perform functions of immigration officers. EO 13767 does not state what the wall will look like, the timeline for construction, or who will bear the costs and how much will be paid for the wall's construction. The glaring fact for tribes on and near the manufactured border is their culture, lands, and people will be impacted, sovereignty disregarded and treaty rights infringed upon. To date, no administration or congressional representatives have engaged tribal officials in discussions about the proposed project. All impacted Tribal officials, many members of congress, and several border state officials object to the proposal as does the president of Mexico. The FY 2017 budget does not provide funding for the border wall but does provide additional funding for increased monitoring and undocumented immigration detention. The administration issued a request for proposal for construction and received designs and options including cost estimates.

DHS FY 2017 Preparedness Grants. On June 2, DHS Secretary John Kelly announced FY 2017 Notices of Funding Opportunity for 10 DHS preparedness grants to state, local, tribal and territorial governments. The grants are for immediate security needs and community public safety. DHS continues to ignore tribal government responsibilities and needs for homeland security risks by failing to increase the funding level for the Tribal Homeland Security Grant Program (THSGP). Funding for all homeland security grants components to states and local governments totals over \$1 billion but the amount available for all 567 federally recognized tribal governments stays flat at \$10 million. Tribal officials have discussed going to DHS and to congress for creation of a tribal homeland security general assistance grant program which would be similar to the Environmental Protection Agency's Tribal General Assistance Program (GAP) that is more flexible in addressing tribal capacity-building and tribal direct funding.

FEMA Tribal Consultation Policy Revision. The Federal Emergency Management Agency (FEMA) is seeking input from tribal governments, officials and other interested partners during the tribal consultation period for the update of the [FEMA Tribal Consultation Policy](#). The FEMA Tribal Consultation Policy (signed in August 2014) guides how FEMA engages tribal governments in regular and meaningful consultation and collaboration on policy and actions that have tribal implications. Comments must be submitted no later than August 29, 2017. Visit the [Tribal Consultation Policy Update Page](#) for more information.

Legislative Update

H.R. 22 - Support More Assets, Resources, and Technology on the Border Act of 2017 (SMART Act of 2017). Sponsored by Rep. Poe (R-TX-02), the bill directs the Secretary of Homeland Security (DHS) to take actions to achieve and maintain operational control of the U.S.-Mexico border (defined as a condition in which all illegal

border crossers are apprehended and narcotics and other contraband are seized); and (2) report to the Government Accountability Office (GAO) on such actions, achievement, and maintenance. Also authorizes a governor to deploy the national guard in concert with Secretary of Defense. Consultation required with state and local officials along the Mexican border, but not tribes. H.R. 22 has two cosponsors and jurisdiction by 5 committees but no movement yet.

S. 53 - Tsunami Warning, Education and Research Act of 2017.

Sponsored by Sen. Cantwell (D-WA), authorizes strengthening tsunami detection, forecast, warning, research, and mitigation programs under the National Oceanic and Atmospheric Administration. Coastal tribes and villages are potentially impacted by tsunamis and the legislation would provide a community-based hazard mitigation program to improve preparedness and resiliency. S. 53 is under the Commerce, Science and Transportation Committee with three cosponsors, but no further activity.

HUMAN RESOURCES/SOCIAL SERVICES

The survival and prosperity of tribal communities depends on the education, health, and welfare of our youth and elders. The Administration and Congress must work with tribes to meet the educational needs of Indian youth; provide adequate health care via the Indian Health Service, for both direct and self-governance tribes; provide safe and secure tribal communities; and supply the social services required to ensure every American Indian and Alaska Native enjoys a decent quality of life and has an opportunity to succeed. Education 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 promise to provide healthcare for Indian people is a sacred agreement that was provided to the tribes in exchange for land and peace. The Indian Health Service (IHS) has been and continues to be a critical institution in securing the health and wellness of tribal communities. Moreover, tribal child welfare providers work tirelessly to serve children and families through holistic, strengths-based, culturally responsive, and family-centered services. Human and social services are a critical part of the continued wellbeing of tribal communities.

EDUCATION

In order for tribes to succeed in tribal and global economies, it is imperative American Indian and Alaskan Natives students receive quality education. However, there are still challenges facing education in Indian Country, from aging and crumbling school facilities, limited access to broadband, and difficulty recruiting and maintaining teachers. Native students often live in isolated, rural areas and have to travel distances of up to 320 miles to and from school. These challenges and others have led to a graduation rate for Native American students and Alaskan Natives are 69% compared with and 82% graduation rate for the country as a whole.

There are approximately 620,000, or 93 percent, of Native students currently enrolled in public schools both in urban and rural areas, while 45,000, or seven percent, attend schools within the Bureau of Indian Education (BIE) system. There are 184 BIE-funded schools (including 14 peripheral dormitories) located on 63 reservations in 23 states. In addition, there are currently 34 accredited Tribal Colleges and Universities (TCUs) in the United States serving more than 30,000 Native students. Effectively reaching all Native students will require a concentrated effort from multiple partners: tribes, the federal government, and State Education Agencies and Local Education Agencies. Tribes, Native parents and families, and communities are best suited to influence these critical factors for academic success.

The Every Student Succeeds Act (ESSA) reauthorized education programs and included several tribal provisions: providing greater tribal consultation requirements between State Education Agencies (SEAs), Local Education Agencies (LEAs), and tribes; greater technical assistance and outreach by the Secretary of Education to LEAs or BIE schools in applying for Title VI grants; newly established language immersion programs in schools; and requires the Secretary of Education to conduct studies and reports to Congress on Native language instruction and youth suicides.

Legislative Update

H.J. Res 57 On February 1st, Congressman Todd Rokita (R-ID) and Chairman of House Subcommittee on Early Childhood, Elementary, and Secondary Education introduced H.J. Res 57, a joint resolution to invalidate the final federal rule (Docket ID ED-2016-OSSES-0032) of the Department of Education published on November 29, 2016. The final regulation, “*Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act- Accountability and State Plans*” amended the regulations regarding the requirements for submission of State plans in accordance of the Every Student Succeeds Act (ESSA). The H.J. Res 57 will impact tribal provisions included in ESSA concerning the State Tribal Education Partnerships and State Goals and Accountability Systems. The joint resolution was passed on the House floor on February 7th; passed by the Senate on March 9th; and signed into law on March 16th.

Esther Martinez Native American Languages Preservation Act S. 254 On February 1st, Senator Tom Udall (D-NM) introduced the reauthorization of the Esther Martinez Native American Languages Preservation Act. The legislation would authorize Native language programs by providing funding to tribes for preserving and increasing fluency through language immersion schools, and language restoration programs. S. 254 was referred to the Senate Committee on Indian Affairs. The Senate Committee on Indian Affairs held a business meeting on Wednesday, February 8th and S. 254 was favorably voted out of the Committee and is now ready for consideration by the full Senate.

Native American Indian Education Act. On March 15th, Congressman Scott Tipton (R-CO) introduced H.R. 1528, “Native American Indian Education Act”, which would amend the Higher Education Act of 1965, which would ensure the federal mandate of requiring certain colleges and States to waive tuition for Native American students in undergraduate college programs. H.R. 1528 was referred to House Committee on Education and Workforce. On March 15th, Senator Cory Gardner (R-CO) introduced the Senate companion bill to H.R. 1528, and was referred to the Senate Committee on Health, Education, Labor, and Pensions. NCAI will monitor these legislations.

Johnson-O’Malley Supplemental Indian Education Program Modernization Act. Senator Heidi Heitkamp (D-ND) introduced S.943, “Johnson-O’Malley Supplemental Indian Education Program Modernization Act”, this legislation would direct the Secretary of Interior to conduct an accurate comprehensive student count which impacts the formula allocation for Johnson-O’Malley Program. The current student count has been frozen to 1995 levels, even though 93 percent of Native students attend public schools, the increase of student counts since 1995 has left these students with unmet needs. NCAI has been working with the National Johnson-O’Malley Association and will continue to monitor this legislation.

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

Reauthorization of the Higher Education Act (HEA). The Higher Education Act expired at the end of 2013 with NCAI urges Congress to reauthorize this Act during this Congress. 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. NCAI will continue to monitor the reauthorization efforts and updating our membership as developments occur.

Administrative Update

Federal Agencies Reorganization. On March 13th, President Trump issued an Executive Order on a Comprehensive Plan for Reorganizing the Executive Branch, this order directs the Director of Office of Management and Budget (OMB) Director to propose a plan to reorganize government function and streamline programs. The agencies have 180 days to submit a reorganization plan to OMB.

State Accountability Plans. On March 13th, U.S. Department of Education Secretary Betsy DeVos announced an updated Every Student Succeeds Act (ESSA) implementation regarding the state accountability plans. The new templates differ from the previous state plans the Obama Administration had implemented, as the implementation no longer requires states to consult with tribes and other stakeholders regarding state plans.

U.S. Department of Education Request FY 2018. On May 23rd, President Trump released the Fiscal Year 2018 budget for the U.S. Department of Education. Included in the budget is the elimination of Alaska Native Education, which according to the justification, the program duplicates services that may be funded through other federal elementary and secondary programs. The other program eliminated is Native Hawaiian Education in which the justification states this program duplicates other federal elementary and secondary programs. In addition, \$1 billion of Title I funds for a new grant program expanding school portability options; and \$500 million in additional funding for charter schools. Overall the President's budget includes a \$9.2 billion decrease from FY 2017 enacted level.

HEALTH

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

As of February 2017, both the Administration and Congressional Leadership have stated their intention to reform the Healthcare system. Neither branches of Government have agreed to plans, especially detailing plans on how future healthcare reform will affect Indian Country and the Indian Health Service. NCAI will continue to advocate for Indian Tribes, for the Government to uphold its trust responsibility as it relates to healthcare and to further empower tribal communities.

Congress Passes Budget Reconciliation Procedure to Repeal the Affordable Care Act. Congress took the first step to repealing the Affordable Care Act (ACA) in early January by approving a budget resolution that sets up the repeal of the health care law through the budget reconciliation process, which would occur through separate legislation. Reconciliation allows for expedited consideration of certain tax, spending, and debt limit legislation. This resolution contains language establishing a process for the repeal of the Affordable Care Act. The resolution allows the Senate to repeal the ACA's tax and budget provisions, including the individual and employer mandates, through Reconciliation, a parliamentary process requiring only 50 votes instead of the usual 60 to pass a bill through the Senate. This legislation does not repeal the Affordable Care Act but means that both chambers have agreed to the procedure by which they can repeal the healthcare law by a smaller margin of votes in the coming Congress. Repealing the law will take 50 votes but replacement legislation will begin through the normal committee system and will need 60 votes in the Senate. It is important to note that because the Indian Healthcare Improvement Act does not contain tax or budget provisions and is not subject to Reconciliation.

President Trump Healthcare Executive Orders. President Trump signed Executive Orders in January, setting up the first Executive steps in repealing President Obama's healthcare policy. The Executive Orders directed agencies to waive, defer, grant exemptions from, or delay implementation of provisions that place a fiscal burden on states or impose a cost, fee, tax, penalty, or regulatory burden on stakeholders. The order did not outline any specific next steps, though President Trump and Congressional Leaders repeatedly have addressed plans to repeal and replace the ACA.

Affordable Care Act Replacements. Many members of Congress have submitted bills to replace the Affordable Care Act. Two bills that are gaining the most steam are the Patient Freedom Act (S. 191) introduced by Senator Cassidy (R-LA) and The Obamacare Replacement Act (S.222) introduced by Senator Paul (R-KY). Both bills have been referred to their Committees but have not moved farther along in the process. The Cassidy bill contains less dramatic changes and allows states to keep their plans and allows patients to be covered for pre-existing conditions. The Paul bill would remove many of the ACA's mandates in an effort to bring the cost of insurance down, but would not cover pre-existing conditions after 2 years. The Trump Administration has stated that a replacement plan will come when nominee Tom Price is confirmed as Secretary of Health and Human Services or later. Republican Congressional leadership and the Administration have not publicly agreed to replacement plan for the healthcare law.

Indian Healthcare Improvement Act and Indian-specific provisions in the Affordable Care Act. The Indian Healthcare Improvement Act (IHICIA) was enacted in 2010 as part of the Patient Protection and Affordable Care Act. The IHICIA provides a wealth of new resources and opportunities for Tribal health care institutions, families, providers and patients. There are Indian-specific provisions in the ACA other than the IHICIA that provide important protections and funding opportunities for Indian Health Service/Tribal/ and Urban Indian (collectively known as the I/T/U) health system. The IHICIA states that any I/T/U should remain the payer of last resort notwithstanding any Federal, State, or local law to the contrary and granted I/T/U providers permanent authority to collect reimbursements for all Medicare Part B services. It also ensures that any health benefits provided by a tribe to its members are not included as taxable

income. It is important to note that because the Indian Healthcare Improvement Act does not contain tax or budget provisions and is not subject to Reconciliation. IHICIA is one of the more successful parts of the ACA, and leaders from both sides of the aisle are working to secure it in any healthcare replacement bill. NCAI will continue to advocate to leaders in Congress and the Administration ensure that the IHICIA and Indian-specific provisions in the ACA remain intact.

Opportunities for Improvement within the ACA. In past Congresses, members have introduced bills to improve the Indian healthcare system. Congresswoman Noem (R-ND) and Senator Daines (R-MT) introduced companion bills titled the Employer Shared Responsibility Mandate in the 114th Congress, but have not been introduced in the 115th Congress. The bills would provide an exemption for Indian tribal governments and tribally owned business from the Employer Shared Responsibility Mandate, the employer mandate within the ACA. The employer shared responsibility mandate requires tribes with 50 or more full-time and/or full-time equivalent employees to offer health coverage to full-time employees (and their dependents) or face significant penalties. Many tribal employers cannot afford to purchase health coverage for their employees and would have to sacrifice other programs and services to try and meet the requirement. As the work forces of many tribes are made up of tribal members, most of their employees are exempt from the mandate and a tribal employer should not be required to offer or pay for such coverage. Many tribal employers rely upon the Indian Health Service to provide health care to tribal member employees as part of the federal trust responsibility and do not offer health coverage on this basis. These bills have not been introduced in the current Congress.

Special Diabetes Program for Indians. The Special Diabetes Programs for Indians, enacted in 1997, provides assistance for developing local initiatives to treat and prevent the disease and has served as a comprehensive source of funding to address diabetes issues in tribal communities by providing grants for diabetes prevention and treatment services to more than 400 Indian Health Service, tribal, and urban Indian health programs in 35 states. SDPI was reauthorized in 2015 for a 2 year renewal, leaving it up for reauthorization by Congress in 2017. NCAI passed a resolution (ATL-14-003) requesting Congress to permanently reauthorize the Special Diabetes Program for Indians and to provide full funding for permanent continuation of this program. NCAI will continue to advocate for permanent reauthorization of the Special Diabetes Program for Indians.

Medicaid protections and expanded eligibility for American Indians and Alaska Natives- Title IC of the IHICIA requires Medicare and Medicaid reimbursement for services provided in IHS & Tribal health care facilities. Medicaid provides the Indian health system with much needed funding to provide basic healthcare services. Expanded eligibility under the Medicaid program has allowed the Indian Health system to realize important financial gains that have helped alleviate pressure off of discretionary appropriations. Over 40 years ago, Congress amended Section 1905(b) of the Social Security Act to apply a 100 percent federal medical assistance percentage (FMAP) paid for by the federal government for services provided to AI/ANs that were received through an IHS or Tribally-operated facility. This ensures that IHS access to state Medicaid services does not burden the states with what is a federal responsibility. As Congress considers Medicaid reform, it is critical that AI/ANs retain 100% FMAP so Medicaid costs for AI/ANs are not shifted to the states. Congress should consider special protections for AI/ANs for the Medicaid program in accordance with the federal trust responsibility

CHILD WELFARE

The National Congress of American Indians (NCAI) is committed to working with our national, regional and local partners in the continued advancement and improvement of strategies and programs designed to protect the interests of American Indian and Alaska Native children, families and tribal communities. As an organization, NCAI is committed to defending the rights of these children to ensure they have a happy and fulfilling life that allows them the opportunity to remain within their Native homelands and communities. Both in the short-term and long-term, NCAI recognizes that continued collaboration and coordination with our partners on strategic planning is key to our collective goals and objectives. In Congress, within the Administration, and even at the State level, our collective efforts must work to increase capacity, support and resources to track, monitor, focus and advocate on legislation that directly and in-directly impacts the general welfare of American Indian and Alaska Native children, and particularly focus on supporting families in need.

Tribal welfare programs play a huge role in seeking to provide improved services and effective resources for tribal citizens. Much of the programs and services are comprised of a number of “discrete, yet interconnected” functions that include family social services, child protection, case management, foster care, foster home recruitment, permanent placement, court advocacy, ICWA coordination and collaboration, and referrals to other services. Tribal child welfare programs work tirelessly to service children and families and are working to implement holistic, strengths-based, culturally appropriate, and family-centered services.

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

The Attorney General’s Advisory Committee on American Indian/Alaska Native Children Exposed to Violence emphasized that “American Indian/Alaska Native children are generally served best when tribes have the opportunity to take ownership of the programs and resources they provide.” NCAI urges Congress and the new Administration to prioritize the safety and continued well-being of all children.

Legislative Update

Tribal Adoption Parity Act of 2017, S. 876 & H.R. 2035. Legislation in both the Senate and House were introduced in April of 2017. These bills seek to amend the Internal Revenue Code to allow Indian tribal governments to determine whether a child has special needs for the purposes of the adoption tax credit. In this capacity, the IRS would recognize Tribal court orders determining the ‘special needs’ of adoptive children which permits adoptive parents to receive tax credits on par with state courts.

S. 876 was referred twice to the Committee on Finance. H.R. 2035 was referred to the House Committee on Ways and Means. NCAI will continue to track and advocate for additional support for these bills.

Family First Prevention Services Act of 2017, H.R. 253. Earlier this year Representatives Vern Buchanan (R-FL-16) and Sander Levin (D-MI-9) introduced a bipartisan bill that seeks to amend parts B and E of title IV of the Social Security Act to invest in funding prevention and family services to help keep children safe and supported at home, to ensure that children in foster care are placed in the least restrictive, most family-like, and appropriate settings, and for other purposes. Under this bill, Indian tribes would receive all of the same benefits as states, because of section 42 USC 679c. The legislation also includes important provisions to give tribal programs additional flexibility in planning and reporting. These are issues that can directly benefit tribal services.

Currently, the federal child welfare finance system provides significantly more funding for the removal of children from their families than services that could safely maintain them in their homes. When children are removed from their homes, even to keep them safe from harm, there is always additional trauma for the child. Conversely, it is almost always more suitable and cost effective to provide supportive services to give families the tools they need to better parent their children than it is to remove them from their homes and place them in substitute care.

H.R. 253 has been referred to the House Committee on Ways and Means and the House Subcommittee on Human Resources. NCAI will continue to actively track and advocate for additional support for this bill.

Administrative Update

The Alyce Spotted Bear & Walter Soboleff Commission on Native Children Act, Public Law 114-244. NCAI will continue to work with members of Congress to advocate and provide recommendations of potential appointments for this (11) member Commission. Thus far, two appointments to the Commission have been confirmed; including Russ McDonald, current president of the United Tribes Technical College in Bismarck, North Dakota; and Anita Fineday, Managing Director of the Indian Child Welfare Program for Casey Family Programs.

The overall focus of this Commission is to address the challenges facing Native children. The Commission will develop a comprehensive study of Federal, State, local and tribal programs that serve Native children, including issues concerning: barriers to funding, data collection, barriers of developing sustainable multidisciplinary programs designed to assist high risk children and families, barriers to interagency coordination, and examples of successful program models and best practices standards for foster care systems, education, juvenile justice systems and health.

The Commissions goal is also to develop recommendations for Federal policy relative to Native children in the short- mid-, and long-term while looking at necessary modifications and improvements to existing child welfare programs. Key items include: reducing the number and time spend in foster care for native children, increase coordination of all parties involved in foster care system to increase child safety, encouraging the hiring and retention of licensed social workers within tribal communities, address the lack of available native foster homes, reduce truancy and improve academic proficiency, extracurricular activities and graduation rates for native children in foster care, and also looking at issues of health care, mental health and physical health.

NCAI will also continue to actively track and support potential appointments, funding sources and other opportunities to advance these Commission goals.

The Native American Children's Safety Act, Public Law 114-165. This law amends the Indian Child Protection and Family Violence Prevention Act to require background checks prior to foster care placements in tribal court proceedings. This law requires the Tribe's standards to include requirements that each tribal social services agency: (1) perform criminal records checks, including fingerprint-based checks of national crime information databases, (2) check any abuse registries maintained by the Indian tribe; (3) check any child abuse and neglect registry maintained by the State, and any tribal abuse registries maintained in the State, in which the individual resides; (4) request any other State in which the individual resided during the preceding five years to enable the agency to check its registry; and (5) any other additional requirements that the Indian tribe determines is necessary and permissible within its existing authority, such as the creation of voluntary agreements with State entities in order to facilitate the sharing of information related to the performance of criminal records checks. Additionally, the law also prohibits a foster care placement from being ordered if the investigation reveals that a covered individual has been found guilty by a federal, state or tribal court of a felony involving child abuse or neglect, spousal abuse, a crime against a child, violence, or drugs.

NCAI will continue to actively track and advocate in support for tribal access to criminal background database information for civil and criminal purposes, in accordance with NCAI Resolution ATL-14-048: *Tribal Access to Criminal Background Database Information for Civil Purposes*.

Department of Interior's Final Rule for State Courts and State Agencies in Indian Child Welfare Proceedings subject to the Indian Child Welfare Act is now effective. Late last year, the Department of Interior's Final Rule on the Indian Child Welfare Act of 1978 (ICWA) became final. These new regulations establish the Department's interpretation of ICWA as a binding interpretation ensuring that state courts and state agencies abide by these minimum Federal standards designed to protect the interests of Indian children, Indian families and Indian tribes involved in state child welfare proceedings. The final rule addresses requirements for state courts in ensuring implementation of ICWA in Indian child-welfare proceedings and requirements for states to maintain records under ICWA.

ICWA establishes minimum Federal standards for the removal of Indian children from their families and the placement of these children in foster or adoptive homes, and confirms Tribal jurisdiction over child-custody proceedings involving Indian children. The previous ICWA regulations had a narrow scope and covered only the administration of ICWA service programs authorized under the Act. Revisions to the regulations were sorely needed and long overdue, as implementation guidance has been lacking and compliance with ICWA has been highly inconsistent since passage of the Act. Moreover, these regulations were fashioned after consultation with tribal and child welfare stakeholders, who stressed the need for binding procedures to ensure uniform compliance with ICWA as originally intended by Congress. Absent these regulations with the force of law, state courts have largely ignored, misapplied, and misinterpreted ICWA's mandates.

These regulations will serve the best interests of the Indian child and promote uniform implementation of ICWA by: 1) ensuring early, permanent placements by mandating early agency and state court compliance in all child

custody proceedings involving an Indian child, 2) providing clear steps and definitions to meet the procedural requirements of ICWA, 3) defining “active efforts” agencies and state courts must employ to prevent the breakup of the Indian family, and 4) mandating the end of emergency removal placements the moment the emergency has ended. NCAI fully supports these much-needed regulations and has provided comments stressing the need for early, uniform implementation.

Lastly, the Department of Interior also published updated ICWA guidelines setting its best standards and practices for state courts and private agencies.

The Department of Health and Human Services publishes Final Rule on the Adoption and Foster Care Analysis and Reports System (AFCARS) including data collection for American Indian and Alaska Native children and ICWA elements. Also late last year, the Department of Health and Human Services, Administration for Children, Youth and Families published its final rule which includes new data collection elements that states will have to report to the federal government. These elements relate specifically to much needed information on ICWA cases and native child placements. This is the first time that these particular requirements will be included in state reporting and the first report is expected to be published by 2020.

As part of our collective efforts, NCAI and the National Indian Child Welfare Association (NICWA) sent a joint letter to the U.S. Department of Health and Human Services urging the Administration to include federal data collection requirements for state government related to implementation of the Indian Child Welfare Act (ICWA), in accordance with NCAI Resolution SD-15-071: *Support for the Inclusion of ICWA Data in the Adoption and Foster Care Automated Reporting System (AFCARS).*

First Kids First Initiative: Lastly, NCAI will continue to be involved in the First Kids First Initiative to maintain connections and updates on other initiatives impacting child health and wellness. Through the First Kids First Initiative, the Native Children’s Policy Agenda is intended to be a tool to develop integrated policy approaches and specific recommendations for Tribal governments, policymakers, and local leaders to use when creating and implementing a vision for a thriving, vibrant Native community. It is also intended to guide stakeholders in identifying specific legislative vehicles and policy issues that may affect Native children – putting First Kids 1st.

CULTURAL PROTECTIONS

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

Legislative Update

NCAI supports reintroduction of the Safeguard Tribal Objects of Patrimony (STOP) Act. Although a bill has not yet been introduced in the 115th Congress, NCAI supports the reintroduction of the Safeguard Tribal Objects of Patrimony (STOP) Act. In the previous Congress, a bipartisan coalition of Southwestern Senators

introduced the STOP Act, S. 3127 sponsored by Senator Martin Heinrich (D-NM). This legislation enhanced penalties under the Native American Graves Protection and Repatriation Act (NAGPRA) from 5 years to 10 years and also prohibits the exporting of Native American cultural objects. It also requires the Government Accountability Office to submit a report to Congress detailing the number of cultural objects illegally trafficked in the US and in foreign markets as well as detailing the extent to which the US Attorney General has prosecuted past violations. The report would also include recommendations for actions by the Attorney General, the Secretary of State and the Secretary of the Interior to eliminate illegal commerce of cultural objects as well as securing repatriation of those objects. The legislation sets up a Tribal Working Group made up of tribes and government agencies to collaborate on writing the report as well as giving tribes the opportunity to advise government agencies on implementation recommendations. NCAI expects the STOP Act to be reintroduced and will continue to track this legislation.

Congress agreed to H. Con. Res. 122, the PROTECT Patrimony Resolution. On December 6th, 2016 the US House of Representatives passed House Concurrent Resolution 122, *the Protection of the Right of Tribes to stop the Export of Cultural and Traditional (PROTECT) Patrimony Resolution*. The resolution was sponsored by Rep. Stevan Pearce (R-NM-2) with several bipartisan cosponsors. The Senate passed a similar resolution by unanimous consent on September 9th, 2016 in an effort led by Senators Tom Udall (D-NM) and Deb Fischer (R- NE). In response to major media coverage of Native sacred, cultural, and religious items being sold in auction houses abroad, Congressman Stevan Pearce (R-NM-2) introduced the *PROTECT Patrimony Resolution* to condemn the theft, illegal possession, or sale, transfer, and export of tribal cultural items. The Resolution also calls upon the Secretaries of the Department of the Interior, Department of State, Department of Commerce, Department of Homeland Security, and the Attorney General to consult with tribes and spiritual religious leaders regarding this issue and to stop these illegal practices and repatriate items to tribes. The Resolution also requests the Comptroller General to conduct a study to determine the scope of illegal trafficking on Native cultural items domestically and abroad.

Administrative Update

Executive Order 13792- Review of Certain National Monuments Established since 1996. On April 26th, President Trump signed Executive Order 13792 to direct the Department of Interior to conduct a review of certain National Monuments designated or expanded since 1996. Of the 27 National Monuments under this review, monuments with significant Tribal cultural and historic significance include Bears Ears, Grand Staircase Escalante, Canyon of the Ancients, Hanford Reach, Mojave Trails, Vermillion Cliffs and Grand Canyon-Parashant. The review will consider public input before designations occurred and if the monument is “the smallest area compatible with the proper care and management of the objects to be protected.”

The Antiquities Act of 1906 grants the President the authority to designate National Monuments and was passed with the intent of protecting Tribal cultural and historic properties from looters. There is no legal precedent or explicit statutory authority for the President to rescind National Monuments. The Public comment period for all National Monuments under review aside from Bears Ears will be open until July 10th, 2017. NCAI will file comments with the Department of Interior and will continue to support the protection of Tribal cultural resources in National Monuments.

NCAI Filed Comments in Support of Bears Ears National Monument Designation. On May 26th, NCAI filed comments with the Department of Interior in strong support of the Bears Ears National Monument. On April 26th, President Trump signed Executive Order 13792 to direct the Department of Interior to conduct a review of certain National Monuments designated or expanded since 1996, including the Bears Ears National Monument. On December 28th, 2016 President Obama designated the Bears Ears area in southeastern Utah as a National Monument. The Bears Ears area contains over 100,000 archaeological sites and holds sacred, cultural, and ceremonial significance to tribes in the region including the Hopi, Navajo, Ute Mountain Ute, Zuni and Uintah and Ouray Ute tribes. The aforementioned tribes have also formed the Bears Ears Inter-Tribal Coalition to protect and preserve this location. NCAI's comments urge the Department to protect the original designation area of the monument, protect the cultural and historical properties located within the monument and to support co management between the Federal Government and the Inter-Tribal Coalition. The Comment period for the Bears Ears National Monument closed in May, but comments for all other National Monuments for Review will remain open until July 10th. NCAI will continue to track this issue and support the protection of Tribal cultural resources in National Monuments.

US Department of Interior to host National Monument Listening Session at NCAI Mid-Year Conference. Executive Order 13792 directs the Secretary of Interior to Review National Monuments designated or expanded since 1996. On May 5, Interior Secretary Zinke released a list of 27 monuments meeting those criteria that will be reviewed. This listening session offers Tribes the opportunity to provide input on Interior Secretary Zinke's review of the identified national monuments.

US Army Corps of Engineers Return Ancient One to Columbia River Tribes, Finally Put to Rest. The Ancient One, also known as the Kennewick Man, was returned to the Umatilla, Yakama, Nez Perce and Colville Tribes by the US Army Corps of Engineers in February, 2017. In 1996, the Ancient One was found near Kennewick, Washington. The Tribes fought in court for the right to have the Ancient One returned for a proper burial. In December, 2016, the Water Infrastructure Improvements for the Nation Act passed both Houses of the US Congress, authorizing the US Army Corps to return the Ancient One's remains to the Tribes. The Ancient One was put to rest in February, 2017.

United Nations Ad Hoc International Repatriation Working Group. U.S. Tribal representatives and leaders participated in a consultation during the 15th session of the UN Permanent Forum on Indigenous Issues on May 13, 2016 to discuss recommendations and next steps for the development of the new UN mechanism for international repatriation. In addition to U.S. Tribal leaders, presenters included representatives of the UNPFII, the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), UNESCO and Indigenous Peoples from other regions. U.S. Tribal leaders also participated in a follow up side event on May 2, 2017 at the UNPFII 16th session, which also include participation by UN bodies, to present updates, progress, continued challenges and next steps.

No New International Repatriation Consultations Announced. The Department of Interior conducted consultations jointly with the State Department, Department of Justice and the Department of Homeland Security on

international repatriation of tribal cultural heritage and properties between October 2016 and December 2016. There have been no further consultations noticed since December 2016. NCAI will continue to track this issue and advocate for the Federal Government to consult with Tribes on the issue of International Repatriation.

NATIVE AMERICAN ELDERS

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

A 2004 profile on American Indians and crime prepared by the Bureau of Justice Statistics (BJS), and the U.S. Department of Justice (DOJ), reported that among persons in the 55 or older category, the American Indian violent crime rate was 22 per 1,000 versus the overall rate of 8 per 1,000. The current public safety of elders on tribal lands are a result of decades of severe underfunding for tribal criminal justice systems, complex jurisdictional landscape, and centuries- old failure by the federal government to fulfill its obligations to Indian Country. The Older Americans Act (OAA) authorizes program for tribes, public agencies and non-profit organizations serving Native elders to assist in prioritizing issues concerning elder rights and to carry out related activities.

Administrative Update

Older American Act Reauthorization Act Implementation. On April 19, 2016, President Obama signed the Older American Act Reauthorization Act of 2016 (OAA), which extended programs for elders for FY2017 through FY2019. The Administration on Aging, within the U.S. Department of Health and Human Services will implement the reauthorization. The OAA included elder abuse screening prevention efforts and training for elderly caregivers. The legislation also places an emphasis on the Long-Term Care ombudsman program by creating new support for modernizing multipurpose senior centers. The funding for these programs will increase over the next three years by six percent. NCAI will be engaged in the department’s implementation of the OAA. In addition, programs created under the OAA specifically for American Indians, Alaska Natives and Native Hawaiians will be maintained. These programs include federal funding for congregate and in home delivered meals for the elderly poor. Tribal organizations are able to receive grants in support of nutritional services and support for family and caregivers.

NATIVE VETERANS

There are many unmet health care and other needs facing Native veterans and the solutions have yet to be found. The Department of Veterans Affairs is one of the agencies President Trump has vowed to cleanup regarding providing health care to veterans. President Trump began his administration with a freeze on hiring of federal workers which would impact employee workers such as hiring of doctors and nurses in the VA health care system. However the ban was clarified to exempt anyone necessary for public safety, including front-line caregivers. The administration and several members of congress are calling for overhaul and scrapping of the Affordable Health Care Act (ACA), or commonly known as Obamacare. Veterans utilize ACA coverage for

preventive care and mental health treatment is mandated in the ACA. There is speculation that VA healthcare will be privatized and privatization coverage will be examined in the coming months.

NCAI will monitor VA initiatives, administrative actions, and proposed legislation impacting American Indian and Alaska Native veterans to ensure they receive benefits and compensation for their military service. It is a tribute to native communities that our warriors continue to serve with valor and distinction in numbers higher than any ethnic minorities in the country.

Administrative Update

President Trump began his administration with a freeze on hiring of federal workers which would impact employee workers such as hiring of doctors and nurses in the Veterans Administration (VA) health care system. However the ban was clarified to exempt anyone necessary for public safety, including front-line caregivers. The administration and several members of congress are calling for overhaul and scrapping of the Affordable Health Care Act (ACA), or commonly known as Obamacare. Veterans utilize ACA coverage for preventive care and mental health treatment is mandated in the ACA. There is speculation that VA healthcare will be privatized and privatization coverage will be examined in the coming months. On a positive note, the VA FY2017 budget was one of the few agencies to receive an increase.

The Senate confirmed Dr. David Shulkin as Secretary of the Department of Veterans Affairs on February 7. Secretary Shulkin was appointed as VA undersecretary of health in 2015. He was responsible for the Veterans Health Administration's 1,700 facilities across the country. Secretary Shulkin stated his plans include reforming the Choice Program regarding private sector health care for veterans and the veterans appeal process for disability claims and pension compensation.

On January 19, 2017, VA issued a final rule recognizing tribal authority to establish a tribal VA benefit claims office through an accredited Tribal Veteran Service Officer (Recognition of Tribal Organizations for Representation of VA Claimants, 82 FR 6265). The effective date was March 21. The NCAI provided comments to the rule change to ensure VA provides the opportunity to ensure fair and timely examinations, assessments and the preparation of a claim, and most importantly, the advocacy of the claim on behalf of native veterans is accomplished in a culturally competent manner. For additional information, contact: Dana Raffaelli, Staff Attorney, Benefits Law Group, Office of the General Counsel (022D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, D.C., 20420, or phone 202.461.7699 (not a toll-free number).

VHA-IHS Memorandum of Understanding

On January 6, the Indian Health Service issued a Dear Tribal Leader Letter to announce that the IHS recently signed an Interagency Agreement with the U.S. Department of Veterans Affairs (VA) authorizing the IHS to use the VA Veterans Health Administration's Consolidated Mail Outpatient Pharmacy (CMOP). With this development, Tribes and Tribal organizations with Indian Self-Determination and Education Assistance Act (ISDEAA) agreements will now be able to access the CMOP through the National Supply Service Center (NSSC).

This letter is available via the link below.

The Principal Deputy Director writes to Tribal Leaders to announce that the Indian Health Service (IHS) recently signed and Interagency Agreement with the U.S. Department of Veterans Affairs (VA) authorizing the IHS to use the VA Veterans Health Administration's Consolidated Mail Outpatient Pharmacy (CMOP). [PDF - 727 KB]

- Enclosure: VA and IHS CMOP Interagency Agreement [PDF - 422 KB]

Legislative Update

S.304 – Tribal Veterans Health Care Enhancement Act. Amends the Indian Health Care Improve Act to allow the Indian Health Service to cover the cost of a copayment of American Indians/ Alaska Natives receiving medical care or services from Veterans Health Administration. Introduced by Sen. Thune (R-SD). Ideally, copayments for VA should be covered by VA or waived and IHS should not be on the hook for copayments. On March 29 S.304 was referred to the Senate Committee on Indian Affairs which ordered that it be reported without amendment.

TRIBAL GOVERNANCE

VOTING RIGHTS

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

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

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

There has been a great deal of talk about voter fraud in the wake of the 2016 election, and this has contributed to a political climate that makes it unlikely that Congress will move forward with legislation to advance voting rights. We also expect that there may be efforts at both the state and federal level that would further undermine the ability of Native voters to participate by imposing additional voter identification requirements or otherwise rolling back access to registration and the polls. At the same time, several tribes were able to successfully secure greater

access to polling places and voter registration through local and state advocacy, and we think this will continue to be a worthwhile place to focus our advocacy and attention.

The Native American Voting Rights Coalition held a two-day meeting in March to discuss our policy priorities and strategize about state and federal advocacy to continue to protect and promote voting rights for Native voters. NCAI will continue to work with our national, regional, and tribal partnership organizations to protect and promote voting rights for Native voters.

Legislative Update

Election Assistance Commission Termination Act. On February 7, the Committee on House Administration approved HR 634, which would dismantle the federal Election Assistance Commission (EAC). The EAC has played a critical role in helping to improve the integrity of elections in the United States. Through its work with state and local election officials and voting advocacy organizations, the EAC has canvassed the nation to identify the best practices for effective election administration. The EAC's efforts have helped state and local governments to modernize the election system and take steps to dismantle barriers to registration and voting that Native Americans continue to face. H.R. 634 would roll back that progress and impede the efforts of Native voters to exercise their fundamental right of citizenship. NCAI joined the Native American Voting Rights Coalition in a letter of opposition to HR 634.

NCAI has worked with members of Congress to develop legislation that addresses barriers to voting for Native Americans, and several bills were introduced last year that included important provisions to advance voting rights for Native Americans. It is unclear whether these bills will be reintroduced in this Congress.

SELF-GOVERNANCE

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

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

Legislative Update

Consistency between DOI and HHS Self-Governance Programs. Tribes have been seeking legislation to amend Title IV of the Indian Self-Determination and Education Assistance Act to create consistency between self-governance programs in the Department of the Interior and the Department of Health and Human Services. This legislation has been introduced and considered in the past several Congresses and has wide-spread support among tribes.

Despite legislation being voted out of the Senate during the first session of the 114th Congress, there was no House activity on self-governance legislation so this remains a top priority in the 115th Congress. Concerns related to the bill's purported impact on non-BIA programs have persisted and need to be addressed before legislation can be passed by both Chambers.

NCAI continues to work with the Self-Governance group to address concerns with the goal of passing legislation in the 115th Congress.

ECONOMIC DEVELOPMENT AND INFRASTRUCTURE

Across Indian Country, a growing number of tribal nations are writing self-authored stories of economic progress. From creating successful nation-owned enterprises to cultivating tribal citizen-owned businesses to preparing their people to take full advantage of expanding economic and job opportunities, they are slowly but surely building the sustainable tribal economies they require in order to revitalize their communities and achieve the futures they seek for themselves. Driving this remarkable yet uneven economic renaissance is tribal self-determination, specifically the responsibility and wherewithal of each tribal nation to create a robust economy based on its own enduring cultural values, distinct challenges, particular circumstances, and short-and long-term community development priorities.

Featured in this section are policy overviews of several main components of Indian Country economic development. For example, tribal governments need and deserve to be at the decision-making table when it comes to policy conversations and formulation around infrastructure development, which is a critical foundation for building sustainable economies. They deserve to be at the table because they have the capacity, experience, and know-how to craft, inform, and execute solutions to the infrastructure challenges facing their communities and those of their neighbors.

The policy overviews below demonstrate how focused attention and targeted action by the federal government – in consultation and collaboration with tribal governments and key national Native organizations – can greatly enhance the ability of tribal nations to achieve economic prosperity, prosperity capable of providing their citizens with job opportunities and a good quality of life.

NATIVE AMERICAN HOUSING

Housing needs are critical for Native families on tribal lands where housing shortages and overcrowding conditions persist. Available data in a recently released U.S. Department of Housing and Urban Development (HUD) report, *Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs*, shows that it would take approximately 33,000 new units to alleviate overcrowding in Indian Country and an additional 35,000 housing units are needed to replace homes that are considered in grave condition. The total need of approximately 68,000 housing units (new and replacement), with the average development cost of a three-bedroom home the total cost is in excess of \$33 billion.

In addition, according to the U.S. Census Bureau 2006-2010 American Community Survey there are an approximately 142,000 housing units in Indian Country, and those homes frequently lack utilities and basic infrastructure. The survey shows that approximately 8.6% lack complete plumbing facilities, 7.5% lack kitchen facilities, and 18.9% lack telephone service. Close to 30% of Indian homes rely on wood for their source of heat. These staggering statistics represent longstanding challenges facing Indian tribes, and needs sufficient funding for investments and proper government-to-government consultation to address these challenges.

The Native American Housing and Self-Determination Act (NAHASDA), which authorizes Indian housing programs for tribes to develop, construct and maintain housing for members expired in 2013. The NAHASDA has enabled tribes the self-determination capability to provide effective housing programs for tribal citizens. NAHASDA effectively replaced the various Indian housing programs under the 1937 Housing Act and

consolidated federal housing funds through direct block grants to the tribes and their housing authorities. Tribes are now exercising their right of self-determination to design and implement their own housing and other community development infrastructure programs. Since its enactment of NAHASDA in 1996, tribal housing programs have made great strides for housing and community development by using sustainable building practices and leveraging their NAHASDA and other federal funding. Currently there are approximately 500 Tribally Designated Housing Entities in Indian Country.

Legislative Update

The Native American Housing and Self-Determination Act Reauthorization. The current NAHASDA authorization expired in 2013. Legislation was introduced in the 114th Congress to reauthorize NAHASDA, but despite passing the House, it failed to pass the Senate. On May 26, 2017, Senator John Hoeven (R-ND) introduced S. 1275, ‘Bringing Useful Initiatives for Indian Land Development Act of 2017’ or the “BUIILD Act of 2017”. This legislation reauthorizes the Indian Housing Block Grant and Section 184 Home Loan Guarantee Program; consolidates the environmental review requirements; increases the leasehold of trust or restricted lands for housing development from fifty years to ninety-nine years; and allows tribes to leverage the NAHASDA Indian Housing Block Grant funding. Not included in S. 1275 is the reauthorization of the Native Hawaiian Block Grant; the Native Hawaiian Home loan Guarantee Program; and the permanency of the Tribal HUD-Veterans Affairs Supportive Housing Program. The Senate Committee on Indian Affairs has schedule a legislative hearing for S. 1275 on Tuesday, June 13th, and NCAI will be providing written testimony on S. 1275.

Senate Democrats announces an Infrastructure Blueprint for 115th Congress. In January, Senate Democratic Leader Chuck Schumer (D-NY) announced a plan to rebuild America’s infrastructure. Titled *A Blueprint to Rebuild America’s Infrastructure*, the plan calls for a \$110 billion to modernize water and sewer infrastructure, and \$10 billion in new innovative financing to increase infrastructure investment. The Trump Administration indicated that infrastructure is a priority and Congress will be considering infrastructure legislation in the coming months.

Administrative Update

President’s Request FY 2018 for U.S. Department of Housing and Urban Development. The President’s FY 2018 Budget request for the Department of Housing and Urban Development (HUD) provides \$40.68 billion in discretionary funding. Also, included in the President’s budget is elimination of some HUD programs. The President has requested \$600 million for the Native American Housing Block Grants, a \$48 million decrease over enacted appropriations level for FY 2017. There was no request of funding levels for the Indian Community Development Block Grant for FY 2018, a \$60 million decrease from enacted FY 2017. HUD did not request funding for Community Development Block Grant as well. HUD will continue to administer the program until all existing grant funding are expended and closed. The Budget FY 2018 did not request funding for Section 184 Program, a decrease of \$7.2 million over FY 2017 enacted funding level. The Department’s justification for no request is Section 184 will carry over prior subsidy budget authority that will guarantee up to \$1.78 billion in loans in FY 2018. The FY 2018 Budget did not request funding for the Native Hawaiian Housing Block Grants for FY 2018, a decrease of \$2 million over FY 2017 enacted funding level. Also, there was not funding request for training and technical assistance programs for NAHASDA. However, the President’s Budget FY 2018 includes funding for the Tribal HUD-Veterans Affairs Supportive Housing (HUD-VASH) Demonstration

Program in the amount of \$7 million, this rental voucher assistances to address homelessness among Native American Veterans.

HUD Report on Housing Needs. On January 5, 2017, the U.S. Department of Housing and Urban Development (HUD) released the *Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs*, a report mandated by Congress in 2014. The Office of Policy Development and Research within HUD conducted a housing needs study of American Indians, Alaska Natives and Native Hawaiians. The study included the collection of data from tribes, tribal households and other stakeholders. The report includes:

- Housing Needs of American Indians and Alaska Natives in Tribal Areas Executive Summary
- Housing Needs of American Indians and Alaska Natives in Tribal Areas
- Housing Needs of American Indians and Alaska Natives in Urban Areas
- Mortgage Lending on Tribal Land
- Continuity and Change: Demographic, Socioeconomic, and Housing Conditions of American Indians and Alaska Native

To review the report you can go here:

https://www.huduser.gov/portal/native_american_assessment/home.html

TRANSPORTATION

Transportation infrastructure is an important component of tribal economic development and plans for safe and adequate roads, bridges, and other modes of transportation are integral to promote tribal economies. Tribal transportation also serves as the primary route that tribal members and surrounding non-tribal communities utilize for school, work, public safety and recreational purposes.

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

Legislative Update

S. 302 John P. Smith Act. Senator John Barrasso (R-WY) introduced S. 302 on February 3, 2017. This bill would make certain tribal transportation projects a categorical exclusion from environmental review or assessments in addressing and greatly improving safety issues such as on roads, pedestrian and bicycle lanes, railway and highway crossing, highway signage and payment markings, and transportation safety planning, etc. The Secretary of the Interior will identify and review which transportation safety projects are categorically excluded and will have to

issue proposed rules on this matter. In addition the Secretary will enter into a programmatic agreement with tribes, who have to show efficient administrative procedures and other requirements in carrying out environmental review. The agreement would enable the tribes to determine on behalf of the Secretary whether the project is categorically excluded from completing an environmental review or environmental assessments.

Senate Democrats Announces an Infrastructure Blueprint for 115th Congress. On January 24th Senate Democratic Leader Chuck Schumer (D-NY) announced a plan to rebuild America's infrastructure. The blueprint titled, *A Blueprint to Rebuild America's Infrastructure*, calls for a \$20 billion for Public and tribal lands, \$210 billion to repair roads and bridges, \$180 billion to replace and expand rail and bus systems, \$65 billion to modernize America's ports, airports, and waterways, and \$10 billion in new innovative financing to increase infrastructure investment. The Trump Administration has indicated that infrastructure is a priority and Congress will be considering infrastructure legislation during this session of Congress. NCAI will advocate strongly for tribal provisions in any infrastructure legislation or plan and for tribes to be included throughout such plans.

Administrative Update

Secretary of Transportation Confirmation. On January 31st, Elaine Chao was confirmed as the Secretary of Transportation by the U.S. Senate with a vote of 93-6. Secretary Chao who is married to Senate Majority Leader and Mitch McConnell (R-KY) had previously served a labor secretary under George W. Bush Administration. She also served as Deputy Secretary of Transportation in the George H.W. Bush Administration. Secretary Chao has experience and knowledge on transportation and as a federal appointee.

Tribal Transportation Self-Governance Negotiated Rule Committee The enactment of the FAST Act included the expansion of tribal self-governance throughout the U.S. Department of Transportation (DOT). Last year, U.S. Department of Transportation published a notice seeking nomination to serve on the Tribal Transportation Self-Governance Negotiated Rule Committee, and announced the membership of the Committee, 12 primary regional tribal representatives, five alternates, six other tribal representatives and seven federal representatives. The Negotiated Rulemaking Committee has met four times in various regions of the U.S. With the incoming new Secretary the Committee meeting was scheduled for March 2017.

On January 20th, President Trump issued an executive memorandum to heads of all federal agencies freezing all pending regulatory action, which would be reviewed before any further regulatory action can be taken. This regulatory freeze has impacted the ability of the rulemaking committee to meet during the freeze.

Tribal Interior Budget Council BIA Road Maintenance Subcommittee. Although the majority of tribal transportation programs are authorized and funded through the Department of Transportation, the Bureau of Indian Affairs (BIA) Road Maintenance program within the Department of Interior is critical to BIA owned roads and facilities. The BIA is responsible for maintaining approximately 29,500 miles of roads in Indian Country including 900 bridges. However funding for the BIA Road Maintenance has remained stagnant at approximately \$24 million for several appropriations cycles, while deferred maintenance has risen to over \$289 million for FY 2015. The condition of these roads is increasingly concerning for tribal members and members of surrounding communities. The lack of sufficient infrastructure also hampers economic development opportunities for tribes. To assist in address this deferred maintenance of BIA Road Maintenance issue the Tribal Interior Budget

Council (TBIC) has formed a BIA Road Maintenance Subcommittee. The Subcommittee has held two meetings during the TBIC meetings to discuss road maintenance.

TRIBAL LABOR SOVEREIGNTY ACT

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

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

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

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

Legislative Update

Tribal Labor Sovereignty Act of 2017, S. 63. The Tribal Labor Sovereignty Act, S. 63 was introduced by Senator Moran (R-KS) on January 9, 2017, and referred to the Senate Indian Affairs Committee. This bill would add

tribes to the definition of government entities exempt from the National Labor Relations Act, thereby ensuring tribal parity with state and other governments. On February 8, 2017, S. 63 was voted out of the Committee and is now ready for consideration by the full Senate.

On February 9, 2017, Congressman Rokita introduced companion legislation in the House of Representatives, H.R. 986. This bill is identical to the TLSA legislation that passed the House in the 114th Congress and has 20 bipartisan co-sponsors. On March 29, 2017, NCAI President Brian Cladoosby testified in support of H.R. 986 at a hearing of the House Subcommittee on Health, Employment, Labor, and Pensions. NCAI strongly supports passage of this legislation and will work with Congress to enact this legislation in the 115th Congress.

TRIBAL TELECOMMUNICATIONS

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

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

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

Legislative Update

Tribal Digital Access Act Introduced. On March 16th, Congressman Raul Ruiz (D-CA) introduced the HR 1581, the “Tribal Digital Access Act of 2017.” The Tribal Digital Access Act amends the Communications Act of 1934 to extend Universal Service principles to Indian Reservations, Indian Communities, allotments and areas with high populations of Indian people. The Universal Service program’s mission is to create accessible

telecommunications rates and access to high cost rural and insular areas. This legislation would extend that mission to Indian Country.

CONNECT for Health Act of 2017 Introduced. On May 19th, Representative Diane Black (R-TN) introduced the Connect for Health Act of 2017 which provides for Accountable Care Organizations to expand telehealth services. The bill would also authorize the Indian Health Service facilities, whether operated by IHS, the Tribe or Tribal Organization, to be eligible for services under this bill.

Administrative Update

NCAI Files Comments on Draft Section 106 Streamlining Rule. On April 18th, NCAI, The United South and Eastern Tribes Sovereignty Protection Fund and the National Association of Tribal Historic Preservation Officers filed joint comments on FCC Docket 17-79 “Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment.” The draft Proposed Rule sought to streamline the Tribal Section 106 Review of Wireless Infrastructure deployment through the FCC’s Tower Construction Notification System. Currently, Tribes review applications for most wireless infrastructure deployment in an area of interest defined by the tribe. With the advent of 5G technology that will require more deployment of smaller devices, the FCC is looking to find ways to build out 5G quickly. While NCAI supports 5G development, we commented on serious concerns in the draft Notice of Proposed Rulemaking that would limit Tribes ability to protect sacred sites like certifying areas of interest, applicant self-certification, exclusions for Rights of Way and lack of consultation. NCAI hosted a webinar on this issue which can be viewed on the NCAI website.

FCC Public Comment Period Open for Section 106 Streamlining Notice of Proposed Rule. FCC Docket 17-79 “Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment” is open for public comment until June 15th. The FCC published the Notice of Proposed Rulemaking in the Federal Register on May 10th and will be accepting comments on the Notice of Proposed Rulemaking until June 15th. Reply comments will be accepted until July 17th. The final Notice of Proposed Rulemaking, as published in the Federal Register, is slightly different than the draft published by the FCC in March. NCAI filed comments on the draft Notice, and will file comments on the final notice as well.

FCC to hold Consultation on Section 106 Streamlining Notice June 8th. The Federal Communications Commission will hold its first in person Tribal consultation regarding the Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (NOI) entitled Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79. The NPRM/NOI seeks comment on the historic preservation and Tribal review processes currently required to deploy wireless facilities. The session will be held on June 8, 2017 at the Sinte Gleska University's Multi-Purpose Building, on the Rosebud Sioux Reservation.

NCAI Files Comments on Telemedicine with the FCC. On May 24th, NCAI and the National Indian Health Board filed comments on docket 16-46 “Actions to Accelerate Adoption and Accessibility of Broadband-Enabled Health Care Solutions and Advanced Technologies.” NCAI and NIHB commented on the lack of broadband in Indian Country and the potential for success of telemedicine in the Indian Health Service. While the Indian Health

Service does have existing Telehealth programs related to behavioral health, NCAI urged the FCC to collaborate with IHS on accelerating telemedicine in Indian Country.

FCC Chairman Ajit Pai at NCAI Mid-Year Conference. FCC Chairman Pai will be addressing the NCAI Mid-Year General Assembly on June 14th at 8:45 am. Chairman Pai has made it his priority to deploy broadband across the country including closing the digital divide in Indian Country. We welcome Chairman Pai on his first official trip to Indian Country as Chairman.

FCC to host Listening Session on Tribal Section 106 Review at NCAI Mid-Year. The FCC will host a listening session with Tribal Leaders at NCAI's Mid-Year Conference at Mohegan Sun on Tuesday, June 13th from 12:00-1:00pm. The listening session will focus on the current Notice of Proposed Rulemaking (WT 17-79) "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Deployment" that considers the role of Tribal Section 106 Historic Preservation Review of wireless infrastructure.

FCC Order Surrenders Radio Stations for Possible Tribal Acquisition. On May 26th, the FCC adopted a consent decree (FCC Order DA 17-458) ordering a renewal of 12 radio station licenses while surrendering 9 other stations for donation to Tribal entities or other non-profit groups. The Surrendered Stations include: KXWY, Hudson, WY; KTWY, Shoshoni, WY; KWWY, Shoshoni, WY; KFMR, Ballard, UT; KZLM, Lewiston, MT; KZNM, Milan, NM; KHSK, Allen, NE; KDNM, Reserve, NM; and KSFQ, Thatcher, AZ. Qualified Tribal Nations will have the opportunity to relocate stations pursuant to Tribal Priority requirements.

FCC Moves Forward on Reshaping Net Neutrality Rules. The Federal Communications Commission is considering major rule changes to the 2015 Open Internet rules. At the Commission's May 18th Public Meeting, the Commission voted to go forward with a Notice of Proposed Rulemaking that would reshape the Open Internet order in favor of less regulation. The FCC will be accepting comments on WC Docket 17-108 "In the Matter of Restoring Internet Freedom" until July 17th and reply comments until August 16th.

TRIBAL TAX PRIORITIES

As national tax reform gains momentum in this new Administration, the inclusion and recognition of Native American governments as sovereign entities, retaining the inherent authority to regulate and tax commerce on tribal lands, must be included. At its core, issues of taxation should reliably provide sufficient governmental revenues free from overlapping state taxation. This creates incentives for business development, infrastructure, job creation, and access to financing tools while providing certainty of jurisdiction, certainty to capital markets, and certainty of tax policy all designed to enhance economic growth directly benefitting the health and welfare of not only tribal communities but also local communities as well. This is simply not the case in Indian Country.

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

collect state taxes: either impose a dual tax or drive business away, or collect no taxes and suffer inadequate roads, schools, police, courts and health care. To add insult to injury, reservation economies are funneling millions of dollars into state treasuries who spend the funds outside of Indian Country. This dilemma undermines the Constitution’s promise of respect for tribal sovereignty, and keeps Indian reservations the most underserved communities in the nation.

Reliable funding sources have been few and far between for every tribal government service for decades and in many respects, the inclusion of tribal governments in national tax policy reform represents a very real opportunity to protect and enhance the many governmental functions and services provided by Indian tribes. Both Congress and the Administration must actively engage with Native nations to achieve comprehensive tribal tax reform.

Tribal Tax Priorities

A. Provisions for Tribal Government Tax Parity

1. Tribal government tax-exempt bonds. Under federal tax rules generally applicable to government debt, tribal governments may issue tax-exempt bonds only for “essential government functions” and are prohibited from issuing “private activity bonds.” The IRS has declined to view economic development as a governmental function, even though state and local governments frequently use tax-exempt financing for development projects.
2. Tribal government pension plans. Under current law, Tribal Nations must maintain two separate types of employee pension plans—a government plan for tribal employees performing essential government functions and a separate plan for tribal business employees. Tribal governments, like state governments, should be able to operate a single, comprehensive, government pension program for all of their employees, regardless of their functions.
3. Tribal foundations and charities. Tribally-controlled and funded foundations and charities do not enjoy the same public charity classification as foundations and charities controlled and funded by state or local governments.
4. Tribal child support enforcement agencies. Tribal child support enforcement agencies need authority to access parent locator services and enforce child support orders through claims against federal tax refunds of parents with past due obligations.
5. Indian Adoption Tax Credit. Adoption is widespread throughout Indian Country. Under current law, the IRS cannot recognize Tribal court orders determining the ‘special needs’ of adoptive children. This provision is needed to permit adoptive parents of Indian children to receive tax credits on par with other adoptive parents whose children’s special needs have been determined by state courts.
6. Extend Tax Benefits Granted to Doctors Employed by Indian Health Service Facilities. Specific tax benefits (such as exclusion from income for the forgiveness of student loan debt) are available to most doctors employed in the public sector, but are unavailable to those employed by the Indian Health Service. Indian Health Service facilities need the same incentives for practitioners to bring their skills to Indian Country as other public health professionals.
7. Support Legislation to Exempt Tribal Government Distributions from “Kiddie tax” Provisions. Due to a flaw in the U.S. Tax Code, distributions from minors trust funds established by tribal governments are subject to taxation at the rate of a minor’s parents, thus resulting in an unnecessarily higher tax rate. Correcting this flaw

would provide fairness to Indian youth and families receiving benefits from tribal funds.

8. Provide Tribal Governments with the Same Excise Tax Exemptions as provided to States. Due to a flaw in the Tax Code, tribal governments are not treated equally as state and local governments for a variety of excise tax exemptions: (i) Excise taxes on luxury passenger vehicles, special fuels, and heavy trucks and trailers; (ii) Manufacturing excise taxes, including the gas guzzler tax; (iii) Communications excise taxes, (iv) Wagering excise taxes, (v) Harbor Maintenance tax; (vi) Occupational taxes on persons in the business of wagering, (vi) Taxes on distilled spirits, wine and beer, (vii) Taxes on certain firearms, and (viii) and the Structured Settlement Factoring Tax.

9. Tribal Leader Access to Social Security Benefits. In 1957, the IRS determined that amounts paid to elected tribal government officials are not considered “wages” under the Federal Contributions Act and thus are not eligible for Social Security benefits. This IRS ruling causes elected tribal officials (particularly those with many years of tribal service) to potentially receive reduced social security benefits or be completely ineligible to receive those benefits. Congress should amend the Social Security Act to permit tribal officials to have the option to contribute to the social security system and receive benefits.

B. Extension and Modification of Tax Provisions Aimed Economic Development

NCAI urges Congress to simplify, expand, and make permanent the Indian Employment Tax Credit as a replacement for the potential loss of the Indian Country Accelerated Depreciation. Specific changes include:

1. Modify the base year from 1993 to the average of qualified wages and health insurance costs for the two tax years prior to the current year.
2. Expand the income tax credit to include up to \$30,000 in qualifying wages and health insurance costs per eligible employee and raise the cap on the permissible wages per qualified or eligible employee from \$45,000 to \$60,000.
3. Provide a payroll tax credit for tribal government employers and Section 501(c)(3) organizations operating on Indian reservations.

C. Set Asides for Low Income Housing and New Markets Tax Credits

NCAI supports enactment of Low Income Housing Tax Credit legislation provided that the legislation includes the following Indian country provisions:

1. Indian nations and tribes should be treated as states for purposes of Low Income Housing Tax Credit allocation and Congress should establish a 2% set-aside of low income housing tax credits for Indian country;
2. Indian tribes should be authorized to use the national average median income in lieu of the area average because in many areas of Indian country local area incomes are too low to benefit actual low income housing users; and
3. Indian tribes should be eligible to receive the low income housing tax credit directly and transfer it to the building manager or developer through a long-term lease to accommodate the unique status of Indian trust lands.

NCAI also supports a 2% set-aside in the New Market Tax Credits program for Indian nations and tribes to spur investment and create jobs in underserved areas of Indian country.

Administrative Update

Action to Appoint Remaining Vacancy and Implementation to the Department of Treasury's Tribal Advisory Committee. NCAI will continue to urge the new Administration to fill the remaining vacancy and urge implementation of the (7) member Advisory Committee. Established under the Tribal General Welfare Exclusion Act of 2014, The U.S. Department of Treasury's Tribal Advisory Committee will advise the Secretary on matters related to the taxation of Indians, the training of Internal Revenue Service field agents, and the provision of training and technical assistance to Native American financial officers. In 2015, the Secretary of Treasury appointed four members of the committee of seven. Those four appointments members include: W. Ron Allen, Chairman and Chief Executive Officer of the Jamestown S'Klallam Tribe; Lacey Horn, Treasurer of the Cherokee Nation, Marilyn "Lynn" Malerba, Lifetime Chief of the Mohegan Tribe, and Eugene Magnuson, Tribal Treasurer of the Pokagon Tribe. In late 2016, there were two additional appointments, including, Shannon Edenfield, a Tribal Council member for the Confederated Tribes of the Siletz Indians of Oregon who serves as its Tribal Administrative Officer and Patricia King, Treasurer for the Oneida Nation. One vacancy remains.

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

In order to ensure long-term stability of tribal communities, tribes need to generate government revenue independent of federal appropriations. Tribal governments are taking on increasing levels of government responsibility, but receive hugely inadequate federal funding. All remaining revenue must come from tribal natural resources or enterprises, and even these limited resources are frequently tapped by unconscionable dual state taxation.

TRIBAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

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

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

Since 1997, TANF grants have served 284 federally recognized tribes and Alaska Native villages through 70 approved tribal TANF programs. gives federally-recognized Indian tribes flexibility in the design of welfare programs to fit the needs of their communities which promotes tribally relevant programs to assist in strengthening families.

NCAI Tribal TANF Task Force was created in 2008 and consists of tribal leaders and Tribal TANF program staff with the goal of ensuring that Tribes have a national voice in TANF and related human services programs' policies, administration and legislation.

Legislative Update

Reauthorization of TANF. TANF was originally up for reauthorization in 2010. Since then, TANF has received short-term extensions to maintain funding instead of a multi-year extension. The most recent extension of funding was in the FY2017 Consolidated Appropriations Act which extended TANF funding for the remainder of FY2017 and for FY2018 at \$16.5 million dollars for tribes, states and territories.

Although the legislation has not yet been introduced in the 115th Congress, NCAI supports the multi-year reauthorization of TANF.

WORKFORCE DEVELOPMENT

Workforce development success in and for Indian Country is demonstrated to hinge above all else on the ability of tribal nations, Native organizations, and tribal colleges and universities (TCUs) to craft innovative, customized solutions to the particular capacity building needs of tribal nations and communities. In that vein, the appropriate role of the federal government is *not* to impose a uniform set of answers to tribal workforce development challenges nationwide. Its job instead is to provide tribal nations, Native organizations, and TCUs with the governance freedom, programmatic flexibility, training and technical assistance, and resources that they need to design and implement bold strategies capable of advancing the distinct workforce development priorities of the specific tribal communities that they serve.

This means working closely with tribal nations and communities to identify and remove the obstacles that currently obstruct tribal innovation, and create new opportunities for tribal ingenuity to take root and flourish. The federal government's task is to endow its systems, processes, programs, and funding protocols with the ease and adaptability that tribal nations and communities have shown that they need to effectively build their human capacity in accordance with their cultural values and in furtherance of their community and economic development goals. As one longtime tribal workforce development expert explains, "It's about letting tribes be tribes, and doing things in a tribal way."

Fulfilling these obligations will take time, focused attention, and sustained effort. It is important to acknowledge the progress that the federal government already has made in providing tribal nations and communities with greater latitude to devise their own tailored workforce development solutions, with Public Law 102-477 and Section 166 of the Workforce Innovation and Opportunity Act (WIOA) among the most notable examples. But additional measures can be taken to more effectively bolster Native-led workforce development efforts.

In October 2016, NCAI released a policy brief “Empowering Tribal Workforce Development,” that presents a comprehensive set of policy recommendations for Congress and the Administration to consider as they engage with tribal nations, leaders, and workforce development practitioners about the best paths forward.

Legislative Update

S.91 & H.R. 228 – Indian Employment, Training and Related Services Consolidation Act of 2017: These companion bills – first introduced in the 114th Congress in 2015 – amend Public Law 102-477 – titled the “Indian Employment, Training and Related Services Demonstration Act of 1992” – to provide for further tribal integration of employment, training, and related services programs using federal funds. Among other things, the legislation revises and expands the types of programs that may be included within an approved tribal 477 integration plan, enables tribes to use available funds to place participants in training positions with employers, and imposes on the Bureau of Indian Affairs a 45-day deadline to disburse funds to recipient tribes. It also treats any funds transferred to a tribe under the legislation as non-federal funds for the purposes of meeting matching requirements under any other federal law. H.R 228 was introduced on January 3, 2017 by sponsor Representative Don Young [R-AK], and was passed by the House of Representatives on February 27, 2017. Meanwhile, S. 91 was introduced on January 10, 2017 by sponsor Senator Lisa Murkowski [R-AK] and referred to the Committee on Indian Affairs. It was voted out of Committee during a Business Meeting on February 8, 2017, and is awaiting a vote by the full Senate. S. 91 was introduced on January 10, 2017 by sponsor Senator Lisa Murkowski [R-AK] and referred to the Committee on Indian Affairs and voted out of Committee during a Business Meeting on February 8, 2017 and is awaiting a vote by the full Senate.

In addition to passage of this legislation, NCAI recommends the following legislative initiatives in the 115th Congress:

Amend Section 166 of WIOA: Congress should pass three amendments to the current language in Section 166 of WIOA to enhance Native-led workforce development efforts: The amendments – which the Administration should champion – are as follows:

(1) Revise the language in Section 166(h)(1) to ensure that the performance indicators and standards applicable to Section 166 programs are standards specifically appropriate to that program.; (2) Remove the application of the performance accountability provisions in the current Section 116 from all funds provided to implement the Native American programs in Section 166 and use the metrics and standards developed specifically for these programs in consultation with the Native American Employment and Training Council in accordance with Section 166(h); and (3) Expand Subsection 166(i)(6) to enable tribal nations or other grantees receiving formula funds from any state under the adult, youth and/or dislocated worker programs to negotiate an agreement with the state and the Secretary providing for the utilization of the funds involved under the terms applicable to

Section 166 programs. This amendment would foster state-tribe collaboration on the provision of services to Native people.

Administrative Update

NCAI's Partnership for Tribal Governance (PTG) Prepares to Release Additional Resources on Tribal Workforce Development.

In addition to its “Empowering Tribal Workforce Development” federal policy brief, NCAI’s PTG is producing a set of five case studies documenting innovative tribal approaches to workforce development. The first three case studies – Coeur d’Alene Tribe, Confederated Salish and Kootenai Tribes, and Ysleta del Sur Pueblo – have been released, and the remaining two (Gila River Indian Community and Quinault Indian Nation) will be released over the next two months. PTG also will release a tribal leaders toolkit on workforce development in fall 2017. To learn more, please visit: <http://www.ncai.org/ptg/work-force-development>.

NAETC Recommendations to DOL Leadership: NCAI supports the recommendations of DOL’s Native American Employment and Training Council (NAETC) to the Secretary of Labor, including: (1) strengthening Indian Country’s voice within DOL by elevating the authority of the NAETC to have direct consultation with the Office of the Secretary, and elevate the Division of Indian and Native American Programs within the ETA organizational structure in order to have a direct relationship to the Office of the Assistant Secretary and the Secretary; and (2) that the DOL work with NAETC and WIOA Section 166 and Public Law (P.L.) 102-477 grantees to convene a tribal workforce summit “to plan a path forward that will be in the best interest of our communities and the Nation as a whole.”

Foster Closer Collaboration between Tribal Workforce and Economic Development Initiatives: The Administration should launch a joint examination by tribal leaders, tribal workforce development practitioners, and federal agency managers to examine the regulations and policies of programs in Commerce, ED, HHS, HUD, DOI, DOL, Treasury, and the Small Business Administration that support tribal economic development and tribal workforce development to ensure that these programs work in tandem to stimulate the development of tribal economies and build the human capacity needed to sustain that development. The federal government also should exempt activities and funds spent on integrated economic and workforce development planning and operations from restrictions on expenditures, program reporting, and accountability requirements that are focused primarily on the skill development of individual participants. It also should explore statutory changes similar to the one in P.L. 102-477 that enables tribal nations participating in that initiative to spend a portion of their funds on economic development, broadly defined by the nations themselves.

The American Indian Population and Labor Force Report is Long Overdue. The report, which the Department of the Interior is required by statute to produce every two years, was last produced for the year 2013, making the next report long overdue. This report can be an important tool for assessing the current state of the Native workforce and crafting solutions to expand/strengthen it. For the next report to provide substantive value to tribal nations, Native organizations, and TCUs, its development must involve tribal leaders and data experts, and it should be informed by workforce and occupational data generated by tribal researchers, to which the federal government should provide technical expertise and financial resources in order to perform the work. This data should be geared towards measuring the distinct job market needs in Indian Country and illustrating the particular socio-economic conditions that impact Native people specifically.

APPROPRIATIONS

The Administration released its proposed FY 2018 Budget on May 23, 2017. With the release of the President's FY 2018 budget, Congress faces a choice on how to fund discretionary programs: (1) continue to provide partial relief from the 2011 Budget Control Act's (BCA) sequester, (2) allow sequestration to take full effect for the first time, or (3) significantly deepen sequester cuts to non-defense programs while eliminating it for defense as proposed in the President's budget.

Appropriators plan to start writing spending bills without a budget resolution in place or an agreement on overall spending limits. The House Appropriations Committee announced the first markup, the Military Construction-VA Subcommittee. Without a budget resolution, the Appropriations Committee does not have an overall limit for discretionary spending that it can use to allocate money among the 12 subcommittees. A decision to use the spending caps imposed by a 2011 deficit-cutting law (PL 112-25) would lead to protests from many lawmakers of both parties who say the caps are too low. The 2011 Budget Control Act set an overall cap on discretionary spending of \$1.065 trillion for fiscal 2018, a \$5 billion cut from this year's level.

See this [budget advocacy toolkit](#) for more information. Contact Amber Ebarb (aebarb@ncai.org or 202-466-7767) at NCAI if you have questions about this analysis.

Larger Themes of Administration's Proposed Budget

On May 23, the Administration released its detailed FY 2018 budget request. Themes in this budget include shifting federal costs to other governments (including tribes, states, and localities). The President's budget states that it will "lay a new foundation that trusts States to help manage America's health care" (2018 Budget, p. 5). The proposal would repeal the Affordable Care Act's (ACA) Medicaid expansion coverage to low-income adults and convert the underlying Medicaid program into a per capita cap or block grant while cutting it deeply. States would face even deeper Medicaid cost-shifts than the House-passed ACA repeal bill.

Similarly, the FY 2018 budget would cut the Supplemental Nutrition Assistance Program (SNAP) by more than \$193 billion over the next ten years (a 25% cut) by shifting costs to states, cutting eligibility for millions, and reducing benefits. The budget would restrict time limit waivers to areas with at least 10% unemployment. The areas that would no longer qualify for waivers from time-limited assistance include high-unemployment and economically hard hit areas such as southern Alaska and the Navajo Nation in Arizona.

The **Community Development Block Grant** would be eliminated, with the justification that "State and local governments are better positioned to address local community and economic development needs" (Major Savings and Reforms, p. 49). The Low Income Heating Energy Assistance Program would be eliminated. The **Social Services Block Grant** would be eliminated "to return the provision of social services back to State and local governments as well as the private sector" (2018 Budget, p. 12).

Large Disinvestment in Non-Defense Discretionary Programs

The President's budget reduces non-defense discretionary programs by \$54 billion below the sequestration level for FY 2018 and by \$1.6 trillion over the next decade — which would take this spending category to its lowest level as a percent of GDP in sixty years.

Department of the Interior Bureau of Indian Affairs, Bureau of Indian Education

The FY 2018 budget for Indian Affairs would be \$2.48 billion, a decrease of \$371.7 million below the FY2017 Omnibus level, a decrease of about 13%. Compared to the FY 2017 annualized CR, the cut is 10.9%.

- **Operation of Indian Programs** would receive \$2.1 billion in the President's Budget, a decline of 11% compared to the FY 2017 Omnibus level and 8% compared to the FY17 CR.
- **Tribal Priority Allocations** would be cut by 12.7% relative to the FY17 CR level.
- **Bureau of Indian Education (BIE)** would be cut by \$105.1 million, 11.8% less than the FY17 Omnibus and \$64.3 million and 7.6% less than the FY17 CR.

Eliminations

The President's budget would eliminate a number of programs, including:

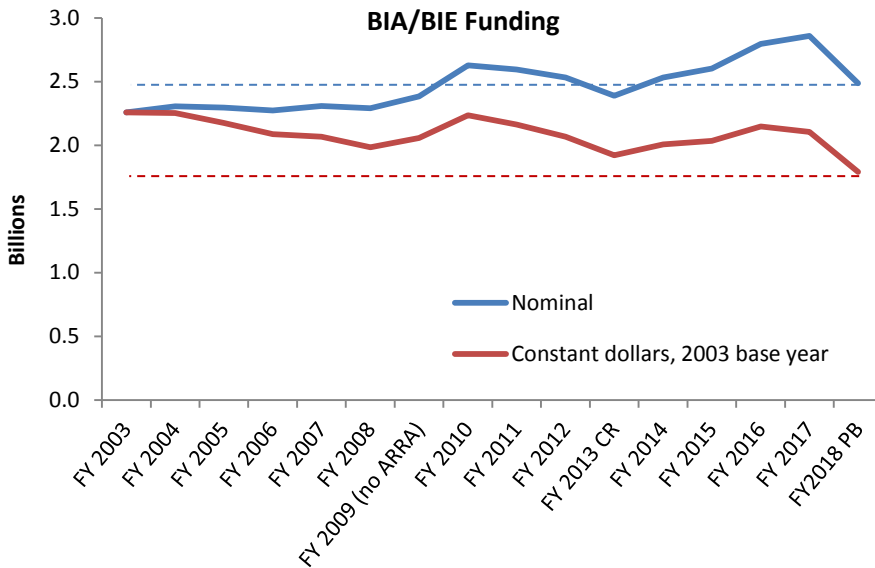
- **Housing Improvement Program**, \$8 million eliminated
- **Tribal Climate Resilience**, \$9.9 million eliminated
- **Alaska Native Programs**, \$1 million eliminated
- **Small and Needy Tribes**, \$1.8 million eliminated
- **Special Higher Education Scholarships**, \$2.7 million eliminated
- **Science Post Graduate Scholarship Fund**, \$2.4 million eliminated
- **Juvenile Detention Center Education program**, \$499,000 eliminated
- **Replacement School Construction**, \$45.4 million eliminated
- **Replacement Facility Construction**, \$11.9 million eliminated

Reductions

Significant reductions (compared to the FY17 CR level) include:

- **Social Services**, a cut of \$10.1 million, or 22.4%, to a total of \$34.9 million
- **Rights Protection Implementation**, a cut of \$8.9 million, or 24%, to a total of \$28.6 million
- **Endangered Species Act**, a cut of \$1.3 million, or 51.4%, for a total of \$1.3 million
- **Trust Services**, a cut of \$6.6 million, or 44.5%, for a total of \$8.3 million
- **Scholarships & Adult Education**, a cut of \$6.2 million, or 19.8%, for a total of \$25.2 million
- **ISEP Program Adjustments**, a cut of \$2.4 million, or 45%, for a total of \$2.9 million

- **Education Program Enhancements**, a cut of \$5.8 million, or 48%, for a total of \$6.3 million
- **Tribal Education Department Grants**, a cut of \$1 million, or 50%, for a total of \$1 million
- **Early Childhood and Family Development**, a cut of \$7.7 million, or 50%, for a total of \$7.9 million
- **Johnson O'Malley**, a cut of \$4.6 million, or 31%, for a total of \$10.2 million



If this budget were enacted for BIA, the overall funding provided for BIA would be lower than any level in the last 15 years, when adjusted for inflation. The 2017 BIA funding level is 6% below the comparable 2010 level after adjusting for inflation. In 2018, those cuts would grow to 20%. These reductions are untenable and absolutely break the trust responsibility to Indian tribes.

Human Services

The President’s budget includes \$123.9 million for Human Services, a program reduction of \$23.3 million from the 2017 CR and \$35.2 million less than the FY17 Omnibus (22% cut), in programs that provide social services, welfare assistance, and Indian Child Welfare Act protections. The reductions largely reflect elimination of funding for pilot programs for the Tiwahe initiative. The President’s budget would also eliminate the Housing Program (-\$8 million).

Public Safety and Justice

The President’s budget proposes \$326 million for Law Enforcement, a reduction of \$21.4 million, or a 6% cut compared to the FY17 CR. Proposed reductions include \$3 million for the pilot program to reduce recidivism, which was completed in 2017 and \$10 million provided to conduct tribal courts assessments located in P.L. 83-280 States. Tribal Courts would be reduced by \$6 million, which eliminates increases provided under the Tiwahe initiative.

	2016 Actual	2017 CR	2018 Request	Change	% Change
Tribal Government					
Aid To Tribal Government	24,833	24,786	25,127	341	1.4%
CTGP	77,088	76,942	72,224	-4,718	-6.1%
Self-Governance Compacts	162,321	162,012	156,634	-5,378	-3.3%
New Tribes	464	463	160	-303	-65.4%
Small and Needy Tribes	1,845	1,842	0	-1,842	-100.0%
Road Maintenance	26,693	26,642	28,148	1,506	5.7%
Tribal Govt Program Oversight	8,273	8,257	8,014	-243	-2.9%
Subtotal, Tribal Government	301,517	300,944	290,307	-10,637	-3.5%
Human Services					
Social Services	45,179	45,093	34,987	-10,106	-22.4%
Welfare Assistance	74,791	74,649	70,794	-3,855	-5.2%
Indian Child Welfare Act	15,641	15,611	14,918	-693	-4.4%
Housing Program	8,021	8,006	0	-8,006	-100.0%
Human Services Tribal Design	246	246	243	-3	-1.2%
Human Services Program Oversight	3,126	3,120	3,007	-113	-3.6%
Subtotal, Human Services	147,004	146,725	123,949	-22,776	-15.5%
Trust - Natural Resources Management					
Natural Resources	5,168	5,158	4,829	-329	-6.4%
Irrigation Ops and Maintenance	11,398	11,376	14,009	2,633	23.1%
Rights Protection Implementation	37,638	37,567	28,625	-8,942	-23.8%
Tribal Mgmt/Development Program	9,263	9,245	9,276	31	0.3%
Endangered Species	2,684	2,679	1,302	-1,377	-51.4%
Tribal Climate Resilience	9,955	9,936	0	-9,936	-100.0%
Integrated Resource Info Program	2,996	2,990	2,815	-175	-5.9%

	2016 Actual	2017 CR	2018 Request	Change	% Change
Agriculture and Range	30,751	30,692	28,822	-1,870	-6.1%
Forestry	51,914	51,815	49,013	-2,802	-5.4%
Water Resources	10,367	10,348	8,534	-1,814	-17.5%
Fish, Wildlife, and Parks	13,646	13,620	12,414	-1,206	-8.9%
Resource Mgmt Program Oversight	6,066	6,055	5,823	-232	-3.8%
Subtotal, Trust - NR Management	191,846	191,481	165,462	-26,019	-13.6%
Trust - Real Estate Services					
Trust Services	15,043	15,014	8,328	-6,686	-44.5%
Navajo-Hopi Settlement Program	1,160	1,158	1,177	19	1.6%
Probate	11,928	11,905	11,869	-36	-0.3%
Land Title and Records Offices	13,905	13,879	13,478	-401	-2.9%
Real Estate Services	36,837	36,767	35,570	-1,197	-3.3%
Land Records Improvement	6,439	6,426	6,109	-317	-4.9%
Environmental Quality	15,792	15,762	13,208	-2,554	-16.2%
Alaskan Native Programs	1,017	1,015	0	-1,015	-100.0%
Rights Protection	11,845	11,822	9,284	-2,538	-21.5%
Real Estate Services Oversight	13,520	13,495	13,023	-472	-3.5%
Subtotal, Trust - Real Estate	127,486	127,243	112,046	-15,197	-11.9%
Public Safety and Justice					
Law Enforcement	347,976	347,315	325,965	-21,350	-6.1%
Tribal Courts	28,173	28,119	21,984	-6,135	-21.8%
Fire Protection	1,274	1,272	1,365	93	7.3%
Subtotal, Public Safety, Justice	377,423	376,706	349,314	-27,392	-7.3%
Community and Economic Development					
Job Placement and Training	11,445	11,423	10,897	-526	-4.6%
Economic Development	1,794	1,790	1,725	-65	-3.6%
Minerals and Mining	25,153	25,106	24,709	-397	-1.6%

	2016 Actual	2017 CR	2018 Request	Change	% Change
Community Development Oversight	2,227	2,223	2,133	-90	-4.0%
Subtotal, Comm and Econ Dev	40,619	40,542	39,464	-1,078	-2.7%
Executive Dir. Admin Services	229,662	229,225	215,592	-13,633	-5.9%
Bureau of Indian Education					
Elementary and Secondary					
Programs (forward funded)	553,458	552,406	520,044	-32,362	-5.9%
Elementary and Secondary Programs	134,263	134,008	123,871	-10,137	-7.6%
Post Secondary Progs (fwd funded)	74,893	74,750	72,689	-2,061	-2.8%
Post Secondary Programs	64,602	64,480	45,721	-18,759	-29.1%
Education Management	25,151	25,103	24,047	-1,056	-4.2%
Subtotal, BIE	852,367	850,747	786,372	-64,375	-7.6%
TOTAL APPROPRIATION OIP	2,267,924	2,263,613	2,082,506	-181,107	-8.0%
Contract Support					
Contract Support	272,000	272,000	236,600	-35,400	-13.0%
Indian Self-Determination Fund	5,000	5,000	5,000	0	0.0%
TOTAL APPROPRIATION, CSC	277,000	277,000	241,600	-35,400	-12.8%
Construction					
Education Construction	138,245	137,982	80,187	-57,795	-41.9%
Public Safety, Justice Construction	11,306	11,285	10,416	-869	-7.7%
Resources Mgmt Construction	34,488	34,422	40,696	6,274	18.2%
Other Program Construction	9,934	9,915	11,963	2,048	20.7%
TOTAL, Construction	193,973	193,604	143,262	-50,342	-26.0%
Indian Water Claim Settlement	49,475	49,381	13,999	-35,382	-71.7%
Indian Loan Guarantee	7,748	7,733	6,692	-1,041	-13.5%
Total, BIA/BIE	2,796,120	2,791,331	2,488,059	-303,272	-10.9%

The next table shows the overall BIA/BIE budget compared to the FY 2017 Omnibus level instead of the 2017 CR.

	FY16	FY17 Omnibus	2018 Request	Change	% Change
Total BIA/BIE	2,796,120	2,859,765	2,488,059	-371,706	-13.0%

Construction

The President’s budget proposes an additional \$2.5 million for the Safety of Dams program and \$1.8 million for dam maintenance and an additional \$1.5 million for irrigation projects rehabilitation. The irrigation rehabilitation program addresses critical deferred maintenance and construction work on BIA-owned and operated irrigation facilities, with a focus on health and safety concerns.

Education Construction: The budget proposes \$80.2 million for Education Construction, \$57.8 million below the 2017 CR. The Budget in Brief states that available funding will continue completion of replacement schools on the 2004 school replacement list and design for the ten schools on the 2016 school replacement list. The FY 2018 proposed budget would temporarily suspend funding for Replacement School and Replacement Facility construction programs while the program focuses on management of the 2016 school replacement list.

For more information, visit: <https://www.doi.gov/budget/appropriations/2017/highlights>

Department of Health and Human Services Indian Health Service

The Indian Health Service budget (IHS) request for FY 2018 of \$4.7 billion in budget authority represents a decrease of \$59 million from the FY 2017 CR and a reduction of \$300.5 million compared to the amount in the FY 2017 Omnibus (a 6% cut).

IHS (Dollars in thousands)	FY17 CR Annualized	FY17 Omnibus	FY18 Pres Bud	+/- from CR	+/- from Omnibus	% Change Omnibus
Services						
Hospitals & Health Clinics	1,853,694	1,935,178	1,870,405	16,711	-64,773	-3.3%
Dental Services	177,947	182,597	179,751	1,804	-2,846	-1.6%
Mental Health	81,944	94,080	82,654	710	-11,426	-12.1%
Alcohol & Substance Abuse	204,915	218,353	205,593	678	-12,760	-5.8%

Purchased/Referred Care	912,401	928,830	914,139	1,738	-14,691	-1.6%
Total, Clinical Services	3,230,901	3,359,038	3,252,542	21,641	-106,496	-3.2%
Public Health Nursing	76,477	78,701	77,498	1,021	-1,203	-1.5%
Health Education	18,220	18,663	18,313	93	-350	-1.9%
Community Health Representatives	58,794	60,325	58,906	112	-1,419	-2.4%
Immunization AK	1,946	2,041	1,950	4	-91	-4.5%
Total, Preventive Health	155,438	159,730	156,667	1,230	-3,063	-1.9%
Urban Health	44,656	47,678	44,741	85	-2,937	-6.2%
Indian Health Professions	48,250	49,345	43,342	-4,908	-6,003	-12.2%
Tribal Management Grants	2,437	2,465	0	-2,437	-2,465	-100.0%
Direct Operations	72,200	70,420	72,338	138	1,918	2.7%
Self-Governance	5,724	5,786	4,735	-989	-1,051	-18.2%
Total, Other Services	173,268	175,694	165,156	-8,111	-10,538	-6.0%
TOTAL, SERVICES	3,559,607	47,678	3,574,365	14,760	-120,097	-3.3%
Contract Support Costs ^{1, 2}	716,605	800,000	717,970	1,365	-82,030	-10.3%
FACILITIES						
Maintenance & Improvement	73,474	75,745	60,000	-13,474	-15,745	-20.8%
Sanitation Facilities Construction	99,234	101,772	75,423	-23,811	-26,349	-25.9%
Health Care Facilities Construction	104,848	117,991	100,000	-4,848	-17,991	-15.2%
Facilities & Env. Health Support	222,187	226,950	192,022	-30,165	-34,928	-15.4%
Equipment	22,494	22,966	19,511	-2,983	-3,455	-15.0%
TOTAL, FACILITIES	522,237	545,424	446,956	-75,281	-98,468	-18.1%
TOTAL, BUDGET AUTHORITY	4,798,450	5,039,886	4,739,291	-59,159	-300,595	-6.0%

Collections/Mandatory	FY 2016 Final	FY 17 CR	FY18 PB	Change
Medicare	248,638	248,638	248,638	0
Medicaid	807,605	807,605	807,605	0
Subtotal, M / M	1,056,243	1,056,243	1,056,243	0

Private Insurance	109,272	109,272	109,272	0
VA Reimbursement ²	28,062	28,062	28,062	0
Total, M / M / PI	1,193,577	1,193,577	1,193,577	0
Quarters	8,500	8,500	8,500	0
TOTAL, COLLECTIONS	1,202,077	1,202,077	1,202,077	0
MANDATORY				
Special Diabetes Program for Indians	150,000	147,000	150,000	3,000
TOTAL, MANDATORY	150,000	147,000	150,000	3,000
TOTAL, PROGRAM LEVEL	6,159,666	6,147,527	6,091,368	-56,159

1 CSC are maintained as discretionary with a separate, indefinite appropriation in FY 2018.

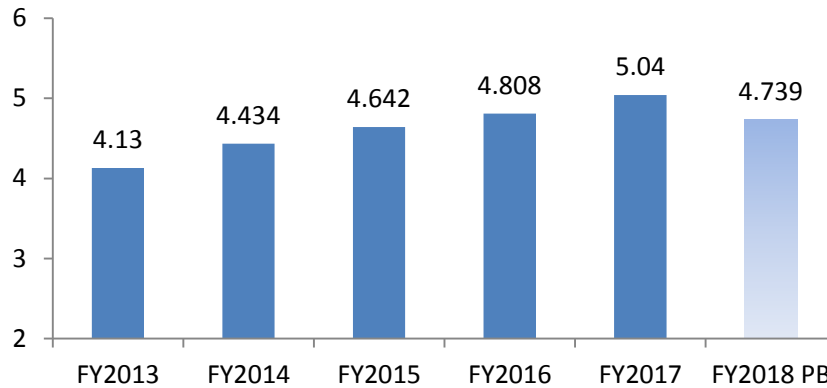
2 The FY 2016 level includes revised estimate of \$718 million for Contract Support Costs and the FY 2017 level reflects an estimated actual cost of Contract Support Costs.

The table shows the subtotals compared to the FY 2017 Omnibus and FY17 CR annualized amounts.

	FY2017 CR, annualized	FY17 Omnibus	FY 2018 PB	Change from FY17 CR	% Change	Change from FY17 Omnibus	% Change
Subtotal, Clinical Services	3,230,901	3,359,038	3,252,542	21,641	0.7%	-106,496	-3.2%
Subtotal, Preventive Health	155,438	159,730	156,667	1,229	0.8%	-3,063	-1.9%
Subtotal, Other Services	173,268	175,694	165,156	-8,112	-4.7%	-10,538	-6.0%
TOTAL, SERVICES	3,559,607	3,694,462	3,574,365	14,758	0.4%	-120,097	-3.3%
CONTRACT SUPPORT COSTS	716,605	800,000	717,970	1,365	0.2%	-82,030	-10.3%
TOTAL, FACILITIES	522,237	545,424	446,956	-75,281	-14.4%	-98,468	-18.1%
TOTAL, BUDGET AUTHORITY	4,798,450	5,039,886	4,739,291	-59,159	-1.2%	-300,595	-6.0%

Indian Health Service Budget Trends
FY2013 - FY2018 President's Budget (PB)

*Budget Authority (Billions)**



*Final enacted amounts as reported in Department of Health and Human Services, Indian Health Service, Justification of Estimates for Appropriations Committees, FY2013-FY2018

The IHS Congressional Justification includes the following changes:

- Staffing and Operating Costs for Newly-constructed Facilities: an increase of \$20 million above the FY 2017 Continuing Resolution for new staffing of two newly-constructed health care facilities. The combined Tribal investments are more than \$86 million in construction to expand access to care in locations where existing capacity is most over extended.
- Facilities: The President’s budget proposes a decrease of \$75 million to Facilities. Reductions include maintenance and improvement, sanitation facilities construction, equipment, and facility environmental health support.

For more information, see the IHS Congressional Justification at

https://www.ihs.gov/budgetformulation/includes/themes/newihstheme/display_objects/documents/FY2018CongressionalJustification.pdf

Substance Abuse and Mental Health Services Administration (SAMHSA)

Tribal Behavioral Health Grants

The FY 2018 Budget Request is \$150 million for all substance abuse prevention efforts, which is \$62 million below the FY17 Continuing Resolution. This request includes \$15 million in the Mental Health appropriation and \$15 million in the Substance Abuse Prevention appropriation for Tribal Communities, which are the same levels as FY17. This funding will promote mental health and prevent substance use activities for high-risk AI/AN youth and their families.

As a braided activity, SAMHSA will track separately any amounts spent or awarded under Tribal Behavioral Health Grants through the distinct appropriations and ensure that funds are used for purposes consistent with legislative direction and intent of these appropriations. The Tribal Behavioral Health Grants program addresses the Administration’s multi-agency Native Youth priority to Reduce Teen Suicide, in support of the HHS Tribal Health and Well-Being Coordination.

Programs of Regional and National Significance

(Dollars in millions)	FY2016	FY2017	FY 2018 Request	Change from 2017
Suicide Prevention				
Mental Health				
AI/AN Suicide Prevention Initiative	2.9	2.9	2.9	0
Tribal Behavioral Health Grants	4.9	15	15	0
Substance Abuse Prevention				
Tribal Behavioral Health Grants	15	14.97	14.97	0

For more information on the SAMHSA budget, visit

<https://www.samhsa.gov/sites/default/files/samhsa-fy-2018-congressional-justification.pdf> page 36

Administration for Community Living

(Dollars in millions)	FY2016	FY2017	FY 2018 Request	Change from 2017
Health and Independence				
Native American Nutrition & Supportive Services	31	31	31	0
Caregiver Services				
Native American Caregiver Support Services	7.5	7.5	7.5	0

For more information, visit <https://www.acl.gov/sites/default/files/about-acl/2017-05/FY%202018%20ACL%20Budget%20Congressional%20Justification.pdf>

Administration for Children and Families (ACF)

Within HHS, ACF provides the largest amount of funding to American Indians/Alaska Natives outside of the funds provided by the Indian Health Service. Out of a budget of \$50 billion, ACF awards on the average \$647 million to Native Americans from the following programs: Head Start, Child Care, TANF, Child Support and the Administration for Native Americans. NCAI's recommendations on many of these programs are available in the [Human Services](#) section of the NCAI FY16 budget request. This year's budget request seeks to eliminate funding for the Community Service Block Grants and the Low Income Home Energy Assistance Program.

(Dollars in millions)	FY2016	FY2017	FY2018	'17-'18
Head Start, Total Resources	9,168	9,150	9,168	+18
Head Start, Indian Tribes	226.1	225.6	226.1	+0.5

Child Care & Development Block Grant, Formula Grants	2,760	2,755	2,761	+5.2
CCDBG, Tribes	75.9	75.9	75.9	0
Child Welfare Services, Formula Grants	268.7	268.2	268.2	0
Child Welfare Services, Tribes	6.4	6.8	6.8	0
Community Services Block Grant, Formula Grants	715	713.0	0	-713
CSBG, Tribes	6.3	6.2	0	-6.2
Family Violence Prevention & Services, Formula Grants	150	149	151.0	1.2
FVPS, Tribes	14.5	14.4	14.5	.96
Title IV-E, Foster Care Formula Grants	4,814	5,302	5,537	234
Title IV-E, Foster Care, Tribes	3.7	9.4	10.7	1.3
Promoting Safe and Stable Families, Formula Grants	383.9	382.5	405.5	22.9
PSSF, Tribes	11.2	11.2	11.9	.7
LIHEAP, Formula Grants	3,390.3	3,000.3	0	-3,000
LIHEAP, Tribes	36.9	32.7	0	-32.7
Administration for Native Americans	50	49.9	49.9	0

Department of Health and Human Services Overall: The total budget authority for HHS is proposed to be \$69.8 billion, which represents a \$14 billion (21%) decrease from the 2017 CR, and includes significant reductions in funding throughout all agencies that are likely to impact tribes, including significant cuts and changes in Medicaid, CHIP, social services, health research, public health and health promotion/disease prevention programs and others, with some critical programs being transferred to states.

For more information on the HHS budget request, visit

https://www.acf.hhs.gov/sites/default/files/olab/acf_master_cj_508_compmay_21_2017.pdf

Department of Justice

Department of Justice

The President's budget proposal for FY 18 includes funding for several tribal programs at DOJ. Specifically, funding in the bill includes:

- \$150 million for Indian tribes through a 5% set-aside from the Crime Victims Fund for providing services to crime victims. Indian tribes have never directly received funding from the Crime Victims Fund;
- a 7% set-aside from across the Office of Justice Programs totaling \$90.4 million for tribal criminal justice assistance. This compares to a 7% set-aside from certain OJP and OJJDP programs for FY 17 and is a significant increase in funding overall over FY 17 levels;
- \$30 million for tribal programs at the COPS office. This is the same as the FY16 funding level. For FY 17, the Attorney General has the discretion to take up to 7% from COPS programs overall for tribal assistance;
- an estimated \$35.5 million for the Office on Violence Against Women's (OVW) Grants to Tribal Governments Program through statutory set-asides from other appropriated programs. This is a slight decrease from FY17 levels;
- an estimated \$6.2 million for OVW's Tribal Coalitions Program through statutory set-asides from other OVW appropriations. This is a slight decrease from FY 17 levels;
- an estimated \$3.4 million for OVW's Tribal Sexual Assault Services Program through statutory set-asides from other OVW appropriations. This is a slight decrease from FY 17 levels;
- \$2.5 million for implementation of Special Domestic Violence Criminal Jurisdiction. This program was funded at \$4 million for FY 17;
- \$1 million for research on violence against Native women. This is the same level of funding as FY 17;
- \$500,000 for the National Indian Country Clearinghouse on Sexual Assault. This is the same level of funding as FY 17.

For more information, visit the DOJ Budget Justifications at:

<https://www.justice.gov/doj/fy-2018-congressional-budget-submission>

Department of Homeland Security

The Department of Homeland Security (DHS) is a rare agency that would receive an increase in the administration's budget. DHS is comprised of 22 component agencies and is slated for a 6.8% increase to \$44.1 billion. A proposed border wall that greatly concerns tribal governments and communities on and near the artificial international borders would be funded at \$4.5 billion. This line item also would pay for hiring customs and border agents, and enforcing immigration laws to detain, transport, and remove illegal aliens. Grants to states, tribes and local governments would be reduced by 35% while many training programs for emergency responders and public safety personnel would be eliminated.

Grant programs managed by the Federal Emergency Management Agency (FEMA) including the Tribal Homeland Security Grant Program (THSGP) would be reduced by \$221 million, from the current \$635 million to \$414 million. The Administration also would require a cost share match of 25% from a state, tribal or local government grantee. The administration's justification is the two largest grant programs (State Homeland Security Grant Program and Urban Area Security Initiative) have over \$1.9 billion in unspent balances. The THSGP is funded at an extremely low level of \$10 million annually.

The \$7.35 billion Disaster Relief Fund stays intact but federal disaster assistance grant programs would be cut by \$1 billion. Other grant programs designed to prevent catastrophic damages from disasters and managed by FEMA will be cut by \$667 million.

Department of Education

The President has requested for the Department of Education FY 2018 \$59 billion in discretionary funding—a decrease of \$9 billion from FY 2017 enacted level. The budget request reflects the support the Department’s education reform to supporting states, school districts and postsecondary institutions to provide high-quality education.

The President has requested for the several elimination of federal programs for FY 2018. Included in the elimination is the Alaska Native Education, it is stated the program duplicates services that may be funded through other federal elementary and secondary programs. The other program eliminated is the Native Hawaiian Education, the justification provided states this program duplicates other federal elementary and secondary programs.

Indian Education Programs

As the below table shows, the Department of Education has requested mostly level funding for all Indian education programs, and elimination of two programs:

Department Education (Dollars in millions)	FY 2015	FY 2016	FY 2017	FY 2018 Requested
Impact Aid	\$1288.6	\$1305.6	\$1303.1	\$1236.4
Indian Student Education (Title VII)	\$123.9	\$143.9	\$143.7	\$143.7
<i>Grants to Local Education Agencies</i>	<i>\$100.4</i>	<i>\$100.4</i>	<i>\$100.2</i>	<i>\$100.2</i>
<i>Special Programs for Indian Children</i>	<i>\$17.9</i>	<i>\$38.0</i>	<i>\$37.9</i>	<i>\$37.9</i>
<i>National Activities</i>	<i>\$5.6</i>	<i>\$5.6</i>	<i>\$5.6</i>	<i>\$5.6</i>
Native Hawaiian Student Education	\$32.4	\$32.4	\$33.4	---
Alaska Native Education Equity Assistance Program	\$31.5	\$31.5	\$32.4	---
Strengthening AN/NH-Serving Inst (mandatory)	\$13.9	\$14.0	\$13.8	\$13.8
Strengthening AN/NH-Serving Inst (discretionary)	\$12.8	\$13.8	\$14.0	\$15.0
Strengthening TCUs (mandatory)	\$27.8	\$28.0	\$27.9	\$30.0

Strengthening TCUs (discretionary)	\$25.2	\$27.6	\$27.5	\$27.5
Tribally Controlled Posts and Technical Institutions	\$7.7	\$8.3	\$8.3	\$8.3
Strengthening NA-Serving Non-tribal Inst (Mand.)	\$4.6	\$4.7	\$4.7	\$5.0
Strengthening NA-Serving Nontribal Inst (Disc.)	\$3.0	\$3.3	\$3.3	\$3.3
Voc Rehab State Grants (Indian Set-Aside)	\$37.2	\$43	\$43	\$43

Department of Agriculture

The President's total FY 2018 request for the U.S. Department of Agriculture (USDA) is \$137 billion—a decrease of \$ 12 billion from the FY 2017 level—with about \$116 billion associated with mandatory programs that provide services as required by law and \$25 billion in discretionary programs, including: Women, Infant, and Children (WIC) nutrition program, food safety, rural development loans, and other services. Over 69% of the total FY 2018 budget request goes to nutrition assistance.

Among the highlights of the FY 2017 USDA budget:

- \$35 billion provided to Rural Development for the financial and technical assistance for rural residences.
- \$162 million for a new grant funding for rural infrastructure called Rural Economic Infrastructure Grants
- The 2018 Budget proposes that no guaranteed loans for the Rural Community Development Initiative and Tribal College Grants.

Tribal Colleges and Universities (TCUs)

As the table below shows, the Department of Agriculture has requested level funding for all TCU programs operated through the USDA National Institute of Food and Agriculture:

Department of Agriculture (Dollars in millions)	FY 2016 Enacted	FY 2017 Enacted	FY 2018 Request
Federally Recognized Tribes Extension Program (FRTEP)	3	3	3
1994 Institutions Research Program	1.8	1.8	1.4
Native American Endowment Account	7	6	5

1994 Institutions Extension Program	4	4	4.4
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The funding level for Federally Recognized Tribes Extension Program (FRTEP) and the 1994 Institutions Research and Extension Programs remains at the same funding level.

Agriculture

Department of Agriculture (Dollars in millions)	FY 2016 Enacted	FY 2017 Enacted	FY 2018 Request
Office of Tribal Relations	.502	.502	.501
Rural Utilities Service (Discretionary Programs)	8.7	8.02	6.2
Rural Housing and Community Facilities (Grants & Loans*)	27	39	37
Water and Waste Disposal Program (Grants)	455	481	427
Fractionated Land Loans	10	10	0
Indian Land Acquisition Loan Program			
Loan Authorizations	2	20	0
Loan Subsidies	0	2.5	0

*USDA is only requesting money for grants for the Rural Housing and Community Facilities in FY 2017 due to the high cost subsidy cost of the guaranteed loan program.

Office of Tribal Relations

The budget proposes a large increase of \$501,000 to fund the Office of Tribal Relations (OTR) to support communication and consultation activities with federally recognized tribes, enhance OTR's to provide support and outreach to the Council on Native American Farming and Ranching, as well as other requirements established by law. The 2014 Farm Bill made OTR a permanent installation under the Office of Secretary.

Highly Fractionated Indian Land Loan Program & Indian Land Acquisition Loan Program

The President did not request funding for the Highly Fractionated Indian Land Loan Program.

Rural Housing and Community Facilities

Through its Rural Housing and Community Facilities programs, USDA supports single family and multi-family housing acquisition through loan guarantees and direct loans. Combined with home repair funds and farm labor housing financing, these programs are designed to support very-low and low-income borrowers. The USDA is changing the amount of funding for loan guarantees and direct loans in each category to promote those products that bear lower administrative costs for USDA. The same is true of the Community Facilities Programs that provide funding for a wide range of essential community facilities, with priority given to health and public safety facilities and education facilities. The FY 2018 budget requests a total \$37 million in grants.

Water and Waste Disposal Program

The Water and Waste Disposal Program provides financing for rural communities of 10,000 or less to establish, expand or modernize water treatment and waste disposal facilities. These facilities provide safe drinking water and sanitary waste disposal for residential users, and help communities thrive by attracting new business. Priority is given to public entities serving areas with a population of less than 5,500 that are applying for loans to restore a deteriorating water system or to improve, enlarge or modify an inadequate waste facility.

Economic Development

While all funding through USDA affects and supports economic development, we focus below on a few programs that enable tribes to build resources that improve the ability of businesses and communities to succeed and to create jobs.

Department of Agriculture (Dollars in millions)	FY 2016 Enacted	FY 2017 Enacted	FY 2018 Request
Rural Business and Industry Guaranteed Loan Program	47	36	36
Foreign Agriculture Service, Market Access Program	192	185	192
Rural Business Development Grants (RBDG)	24	24	30
Telecommunications Programs - Treasury Loans	347	12	345
Telecommunications Programs - FFB Loans	345	345	345
Distance Learning and Telemedicine - Grants	22	22	0
Broadband Programs			
<i>Direct Loans</i>	20	27	27
<i>Grants</i>	10	10	0

Rural Business and Industry Guaranteed Loan Program

This program provides protection against loan losses so that lenders are willing to extend credit to establish, expand, or modernize rural businesses. Funding for the B&I program will focus on supporting high-priority areas of the Administration such as access to capital markets in rural areas, local and regional food systems, bio-based businesses, and renewable energy development. USDA is shrinking its loan guarantee offerings, often in favor of direct loans, due to the cost of the programs.

Market Access Program

Under the Market Access Program (MAP), funds are used to reimburse participating organizations for a portion of the cost of carrying out overseas marketing and promotional activities, such as consumer promotions. MAP has a brand promotion component that provides export promotion funding to 600-800 small companies annually. MAP was extended in the 2014 Farm Bill.

Rural Business Development Grants

The Rural Business Development Grants (RBDG) program was created by the 2014 Farm Bill to consolidate the Rural Business Opportunity Grants and the Rural Business Enterprise Grants programs.

Telecommunications

The FY 2018 Budget request of \$345 million to bring up to FY 2016 enacted levels for direct and \$345 million in guaranteed loans through the Federal Financing Bank for telecommunications projects for the improvement and construction of telecommunication facilities that meet broadband standards, although they are not meant to be used for all broadband purposes.

Broadband, Distance Learning and Telemedicine

The President did not request funding for this program for FY 2018. The broadband program provides financing to support new or improved broadband access across rural America. The Distance Learning and Telemedicine Grant Program is designed specifically to assist rural communities that would otherwise be without access to learning and medical services over the Internet.

Nutrition

The funding for the Food Nutrition and Consumer Services programs includes both WIC and the Food Distribution Program on Indian Reservations (FDPIR). Both are important programs for the services they provide, the people they feed and the jobs they bring to our communities.

Department of Agriculture (Dollars in millions)	FY 2016 Enacted	FY 2017 Enacted	FY 2018 Request
Supplemental Nutrition Assistance Program (SNAP)	81,830	78,480	83,690
Special Supplemental Nutrition Program for Women, Infant, Children (WIC)	6,350	6,350	6,150
Food Distribution Program on Indian Reservations (FDPIR)	103	151	153

Special Supplemental Nutrition Program for Women, Infants, Children (WIC) The Budget proposes \$6.150 billion for the WIC Program which is on par with FY 2017 appropriations. The budget includes a \$1 billion cancellation of unobligated balance in WIC because of decline in program cost as result of decrease in participation and food cost inflation rates.

Food Distribution Program on Indian Reservations (FDPIR)

FDPIR provides USDA foods to low-income households living on Indian reservations, and to American Indian households residing in approved areas near reservations or in Oklahoma. Currently, there are approximately 276 tribes receiving benefits under FDPIR through 100 Indian Tribal Organizations (ITOs) and 5 state agencies. The FY 2018 request includes a \$2 million increase in funding from the prior year’s level. Participation has increased by 23% since 2013, and is expected to reach 104,000 participants in 2018, and increase of over 93,000 in 2016.

Natural Resources and Environment

The increase and redirection of the budgets for the programs in this area focus on conservation practices as well as a restoration to create habitat and restore environments for wildlife and land management.

Department of Agriculture (Dollars in millions)	FY 2016 Enacted	FY 2017 Enacted	FY 2018 Request
Environmental Quality Incentives Program (EQIP)	1,529	1522	1,412
Regional Conservation Partnership Program	93	93	93
Agricultural Conservation Easement Program	419	466	234

Watershed Rehabilitation Program	12	12	0
Small Watershed Rehabilitation Program	68	0	0
Conservation Security Program	28	5	0
Conservation Stewardship Program	1,225	1,288	1,401

Environmental Quality Incentives Program (EQIP)

The purpose of EQIP is to provide assistance to landowners who face serious natural resource challenges that impact soil, water and related natural resources, including grazing lands, wetlands, and wildlife habitat.

Conservation Stewardship Program (CSP)

The Conservation Stewardship Program encourages participants to undertake new conservation activities in addition to maintaining and managing existing conservation activities.

Environmental Protection Agency

The current EPA budget of over \$8 billion would be reduced to \$5.7 billion. The downsize of over 31% will be a reduction in force by 4,000 employees, from approximately 15,000 to 11,600. A program that provides infrastructure assistance to Alaska Native villages and Mexican border communities would be eliminated. EPA provides funds to the Alaska Department of Environmental Conservation (DEC) to address the needs of rural and native Alaska communities. The DEC, in turn, administers these funds through its Village Safe Water (VSW) program. The VSW program’s goal is to improve public health and compliance with environmental laws by upgrading the level of sanitation facilities in rural [Alaskan] communities.

State and tribal programs under the Clean Air Act, Clean Water Act, and Safe Drinking Water Act would be reduced by almost 45% to \$482 million, from \$1.079 billion to \$597 million. Funding for hazardous Superfund sites would be cut \$330 million, from \$1.092 billion to \$762 million. Regional ecosystem protection efforts called Geographic Programs that include the Great Lakes, Puget Sound, and various watersheds will be eliminated from the current \$427 million level. Funding for EPA enforcement against polluters and other regulatory violators will be reduced to \$419 million from \$548 million. Funding for international climate change programs will be eliminated.

The EPA Tribal General Assistance program proposed level is \$45.7 million, a reduction of \$19.6 million from the FY17 CR level.

Department of Energy

(Dollars in thousands)	FY 2016 Enacted	FY 2017 Current	FY 2018 Request	FY2018 v. FY2016
Office of Indian Energy Policy and Programs (DA)	16,000	16,000	10,000	-37.5%

In FY2018, the Department of Energy will receive \$10 million to fund the Office of Indian Energy Policy and Programs (hereafter referred to as the Office of Indian Energy or IE). This marks a significant budgetary cut of \$6 million dollars or a 37.5% reduction compared to FY2016 levels. A \$6 million dollar reduction further limits the capacity and amount of resources available to tribes for FY2018 who are planning energy and infrastructure projects. Limitations on tribal energy development continue to be problematic for many tribes due to a lack of access to capital, absence of tribal capacity for energy and economic development, and the complicated legal and regulatory structure governing the use of Indian lands.

The Office of Indian Energy is responsible for serving all 567 Federally-recognized Indian tribes including Alaska Native villages, Village and Regional Corporations, and other tribal and intertribal organizations and associations. Service is provided through technical assistance, education and capacity building, financial assistance, and through policy initiatives, coordination with tribal, federal, and state governments, private industry initiatives, and related research and analysis.

As part of the FY2018 IE budget, approximately \$7.1 million will be used to provide technical assistance and financial assistance to support energy development, energy efficiency improvements, electrification projects, remote community energy hybrid systems, and micro grid deployment; and the remaining \$2.9 million for Program Direction to support nine (9) FTEs. FTE's perform program management functions, implement program activities, budget execution and procurement functions, monitor over 200 grantees and contractor activities, and cross-cut and remote community renewable energy program activities.

The FY 2018 Budget anticipates 9 federal staff: 4 FTEs in Washington, D.C., 2 FTEs in Anchorage, Alaska, and 3 FTEs in Golden, Colorado. The Washington, D.C. staff includes executive leadership, operations, and policy analysis. The Anchorage, Alaska staff provide education, outreach, capacity building, and technical assistance to the nearly 230 Alaska Native villages, over 200 Alaska Native regional and village corporations, 13 Alaska Regional Corporations and 13 regional associations, and organizations to promote Indian energy policies and initiatives. The Golden, Colorado staff provide supervision, technical assistance, education, outreach, and capacity building delivered to within the

contiguous US to nearly 340 Indian tribes and dozens of tribal and intertribal organizations, and manage over 70 existing grant awards throughout the nation.

For more information see page 167 of the budget document below:

https://energy.gov/sites/prod/files/2017/05/f34/FY2018BudgetVolume2_0.pdf

Department of Housing and Urban Development

The President's FY 2018 Budget request for the Department of Housing and Urban Development (HUD) provides \$40.68 billion in discretionary funding.

Native American Housing Block Grant

The President has requested \$600 million for the Native American Housing Block Grants, a \$48 million decrease over enacted appropriations level for FY 2017. The Department mentioned HUD's Housing Needs of American Indians and Alaska Natives in Tribal Land Assessment Report released at the beginning of the year, and acknowledged the Department will explore ways to use technical assistance to help tribes to meet their urgent housing needs.

Native Hawaiian Housing Block Grants

HUD did not request funding for the Native Hawaiian Housing Block Grants for FY 2018, a decrease of \$2 million over FY 2017 enacted funding level.

Indian Housing Loan Guarantee Program (Section 184)

HUD did not request funding for Section 184 Program for FY 2018, a decrease of \$7.2 million over FY 2017 enacted funding level. The Department's justification for no request is Section 184, it will carry over prior subsidy budget authority that will guarantee up to \$1.78 billion in loans in FY 2018.

Native Hawaiian Loan Guarantee Fund (Section 184A)

HUD did not request funding for Section 184A for FY 2018, and it was not funded for FY 2017 enacted funding level. The Department's justification for no request for Section 184A, it will carry over prior loan guarantee authority sufficient to guarantee up to \$23.3 million in loans for FY 2018.

Indian Community Development Block Grant

There was no request of funding levels for the Indian Community Development Block Grant for FY 2018, a \$60 million decrease from enacted FY 2017. HUD did not request funding for Community Development Block Grant as well. HUD will continue to administer the program until all existing grant funding are expended and closed.

Training and Technical Assistance

There was no funding request from HUD's FY 2018 for training and technical assistance programs for NAHASDA. This is a decreased of \$3.6 million from enacted FY 2017.

Tribal HUD-VASH Demonstration Program

Through Tenant Based Rental Assistance, HUD has provided funding for rental voucher assistances to address homelessness among Native American Veterans. The President has requested the Tribal HUD-Veterans Affairs Supportive Housing (VASH) Demonstration Program in the amount of \$7 million for FY 2018.

(\$ in millions)	FY 2016 Enacted	FY 2017 Enacted	<i>Requested FY 2018</i>
Native American Housing Block Grant	\$650	\$654	\$600
Title VI Loans Program Account	\$2	\$.996	\$2
Native Hawaiian Housing Block Grants	---	\$2	---
Indian Housing Loan Guarantee Fund (Section 184)	\$7.5	\$7.2	---
Native Hawaiian Loan Guarantee Fund (Section 184A)	---	---	---
Indian Community Development Block Grant	\$60	\$60	---
Training & Technical Assistance	\$2	\$3.6	---
National & Regional Organization	\$3.5	\$2.9	---
Tribal HUD-VASH Demonstration Program	\$5.9	\$7	\$7

Department of Labor

DOL’s Indian and Native American Programs (INAP): The Budget **proposes to maintain funding for FY 2018 for INAP at its current level** (\$49.9 million for FY 2017). DOL, however, is proposing “an appropriations change to this budget request to move the obligation period from July 1, 2018 through June 30, 2019 to April 1, 2018 through June 30, 2019,” expanding the term of the obligation period by three months. It states that this change “will allow the Department sufficient time to complete the allotments and make awards well in advance of the beginning of the recipients’ period of performance,” and will not “alter the grantees’ period of performance.” The number of Native participants served also will remain the same at 33,471.

For more information, see [FY 2018 CONGRESSIONAL BUDGET JUSTIFICATION EMPLOYMENT AND TRAINING ADMINISTRATION Training and Employment Services](#), TES-41 – TES-44

The Budget seeks to severely **reduce funding for Workforce Innovation and Opportunity Act (WIOA) Title I and III Formula Programs by 38.6%** (from \$3.474 billion in the 2017 CR to

\$2.133 billion), explaining that “in a resource-constrained environment, the Budget would shift responsibility for funding these services to localities, State, and employers...giving them more freedom to design their programs.” ([MSAR](#), p. 18) As an example, for Title I (Youth Activities) specifically, the Budget seeks a 40% reduction in funding (totaling \$348 million) from its FY 2017 level. This will lead to a concurring reduction in the number of WIOA youth participants served from 164,358 to 98,730.

For more information see [FY 2018 CONGRESSIONAL BUDGET JUSTIFICATION EMPLOYMENT AND TRAINING ADMINISTRATION Training and Employment Services](#), TES-25 – TES-27

Department of Transportation

The President’s FY 2018 request for U.S. Department of Transportation (DOT) is \$78 billion. The total funding level is the same as FY 2016. This budget provides \$200 billion to support the Administration’s Infrastructure proposal. The President is requesting \$45 billion for Federal-aid Highway Program for FY 2018, investing into the Nation’s highway and bridge infrastructure. In addition, the President has requested \$1.10 billion for Federal Lands and Tribal Programs to improve and expand transportation accessibility on and federal and tribal lands.

(\$ in millions)	FY 2016 Enacted	FY 2017 Enacted	Requested FY 2018
Federal Highway Administration			
Federal -Aid Highway-Federal Lands and Tribal Transportation Program: Tribal Transportation Program	\$465	\$475	\$485
Federal Transit Administration			
Section 5311 (c) Public Transportation on Indian Reservations (Tribal Transit Grant Program)	\$35	\$35	\$35
National Highway Traffic Safety Administration			
Highway Traffic Safety Grant (Section 402)- Indian Highway Safety Program (Administered by Bureau of Indian Affairs)	\$4.8	\$4.8	\$5

Department of Commerce

The Budget requests \$7.8 billion for the **Department of Commerce**, a **\$1.5 billion or 16% decrease** from the 2017 annualized CR level. Part of this decrease comes from the **Budget’s elimination of the Economic Development Administration (EDA)**, justifying its elimination by citing EDA’s duplicative or unauthorized programs (it received \$251 million in funding through the 2017 CR) ([MSAR](#), p. 16). The Budget also proposes to **eliminate the Minority Business Development Agency (MBDA)**, justifying its elimination by citing MBDA’s duplicative or unauthorized programs (it received \$32 million in funding through the 2017 CR) ([MSAR](#), p. 18).

Department of the Treasury

The Budget requests \$12.1 billion in discretionary resources for the **Department of the Treasury's domestic programs, a \$519 million or 4.1% decrease** from the 2017 annualized CR level.

Of great concern to Indian Country is the Budget's proposal to **eliminate new grants to Community Development Financial Institutions (CDFIs) through the CDFI Fund** (\$210 million in grants were allocated through the 2017 CR), and requests just \$14 million for the CDFI Fund to provide oversight of existing commitments and administration of the CDFI Fund's other programs. It justifies the elimination of new grants by explaining – without providing any supporting evidence – that the CDFI industry “has matured, and these institutions should have access to private capital needed to extend credit and provide financial services” ([MSAR](#), p. 80). It further explains: “Created in 1994, but currently unauthorized, the CDFI Fund provides grants, loans, and tax credits to a national network of CDFIs to expand the availability of credit, investment capital, and financial services for low-income and underserved people and communities. Today, with nearly 1,100 Treasury-certified CDFIs, including loan funds, community development banks, credit unions, and venture capital funds active in all 50 states, that goal has been achieved” ([MSAR](#), p. 80).

Other Independent Agencies

- The budget proposes to **restructure the Consumer Financial Protection Bureau (CFPB), limit the CFPB's mandatory funding in 2018, and provide discretionary appropriations to fund the Agency beginning in 2019**. It seeks to basically erode the CFPB's ability to protect the assets of Native and other American consumers by drastically reducing the Bureau's funding over the next decade, beginning with a \$145 million reduction in FY 2018 and increasing to an \$826 million reduction from its current level in FY 2027 ([MSAR](#), p. 158).

INTERNATIONAL ISSUES

For many years NCAI has engaged in discussions at the international level when important policy decisions are under discussion that impact tribal interests, including at the United Nations (UN) and the Organization of American States (OAS). NCAI holds ECOSOC consultative status with the UN, which allows us to participate in many UN meetings. NCAI works in close partnership with the Native American Rights Fund (NARF), who represents NCAI on many international policy issues. Given the time and expense of international advocacy, NCAI and NARF are selective about when we engage on international issues. In recent years, we have prioritized certain negotiations at the UN and the OAS that have been creating the structural framework for the advancement of indigenous rights, including the negotiation and adoption of the UN Declaration on the Rights of Indigenous Peoples in 2007 and the American Declaration on the Rights of Indigenous Peoples in 2016.

FOLLOW-UP to the 2014 WORLD CONFERENCE ON INDIGENOUS PEOPLES

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

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

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

During the opening session of the WCIP, the UN General Assembly adopted an Outcome Document that provides for concrete and action-oriented measures to implement and achieve the objectives of the United Nations Declaration on the Rights of Indigenous Peoples. While we did not get everything we were asking for, the Outcome Document does address all 4 of our priorities in one form or another. Over the past two years, there has been a great deal of follow-up work to the WCIP and NCAI, in partnership with the Native American Rights Fund, has been fully engaged in continuing to advocate with various UN bodies for meaningful action on our four priorities. We anticipate further engagement on our four priorities as follows.

Creating an Implementing and Monitoring Body for the UN Declaration. The UN Human Rights Council adopted a resolution at its Sept. 2016 session that will reform the mandate of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) to give it greater capacity, autonomy, and resources to press for implementation of the UNDRIP. The reformed mandate will significantly change the way that EMRIP will function. Its main tasks will be to assist states to meet the standards of the UNDRIP,

facilitate dialogue between states and Indigenous Peoples, take in information about violations of indigenous rights, and provide technical advice to states and Indigenous Peoples. The membership of the EMRIP will be expanded from 5 to 7 persons to make it a more representative body and the annual meeting time will be expanded with an additional 5 working days. These changes are expected to take effect within the next year.

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

When the 71st Session of the General Assembly began in September 2016, the new President of the UN General Assembly reappointed the four Advisors to continue their work with the goal of developing a resolution that establishes the process for enhanced participation by indigenous governing institutions during the 71st session of the General Assembly, which ends in September 2017. A meeting of indigenous representatives and the four Advisors took place Nov. 11-12 in Bangkok, Thailand. Consultations with member states and indigenous peoples took place on several occasions between December and April 2017 in New York. These consultations focused on how indigenous peoples representative institutions should be identified for enhanced participation at the UN and what those entities should be able to do within the UN system. The UN member states are not in the process of negotiating a resolution for consideration by the UN this fall. There are several key issues in the negotiation including: 1) whether Indigenous peoples' representative institutions will be able to participate at all levels of the UN or will be limited to participating only where non-governmental organizations are permitted; and 2) whether states will be able to control who from within their borders should be recognized as a legitimate Indigenous peoples' representative institution. NCAI will continue to advocate for an appropriate mechanism for tribal governments to participate at the United Nations.

Climate Change. Despite having a negligible carbon footprint, indigenous peoples often are the most severely impacted by the effect of climate change because of their close relation with the land and reliance on natural resources. Right now, as many as 184 Alaska Native villages are threatened with removal due to climate-based changes. And the effects are only getting worse. Communities are losing

homes, hunting and fishing landscapes are changing drastically, and changes in weather patterns are adversely affecting the harvesting of plant-based foods and medicines.

Indigenous peoples from around the world, including NCAI, NARF, and many tribal leaders from the U.S., participated in the negotiations and preparations leading up to the historic Paris Agreement, which was finalized in December of 2015. Following President Trump's announcement of his intention to withdraw from the agreement, NCAI and NARF released a statement recommitting to work towards implementation of the agreement. A number of tribal nations have released similar statements. NCAI is committed to working to ensure that all parties respect, promote, and consider indigenous peoples' rights in all climate change actions, as is required by the Paris Agreement. Indigenous peoples often can offer unique knowledge on how to respond to climate changes. It is essential that this place-based knowledge is included in any discussion of climate change. Due to years of effort, the link between traditional knowledge, sustainable development, and cultural resilience now is reflected in the international conversations that take place around climate change policy. The Paris Agreement recognizes the importance of place-based and traditional knowledge and established a platform for indigenous peoples to share that knowledge and experience. We will continue to work with the International Indigenous Peoples Forum on Climate Change to ensure a platform that best serves indigenous peoples and preserves and shares traditional knowledge in a way that is respectful of indigenous peoples' right to self-determination and that their rights to their lands, territories, and natural resources are honored.

Intellectual property and traditional knowledge. The World Intellectual Property Organization (WIPO) is currently negotiating an international agreement that will create new binding international law relating to intellectual property that could provide effective protection of traditional knowledge, genetic resources, and traditional cultural expressions, including those of Indigenous Peoples. The WIPO Committee charged with this task will hold an important session in Geneva, Switzerland on June 12-16, 2017. On May 4-5, 2017, the Native American Rights Fund and the University of Colorado Law School hosted a drafting session to propose text for the upcoming negotiations. The draft focuses on the problem of theft and illegal possession of tribal cultural expressions. It also addresses false marketing suggesting affiliation, approval or endorsement by indigenous peoples. At the NCAI Midyear at Mohegan, Connecticut, NCAI will host a consultation session with the U.S. Patent & Trademark Office, the federal agency that engages with WIPO, on June 12, 2017. This coincides with the first day of the negotiation in Geneva, and so will be conducted by conference call with federal officials.

WHITE HOUSE UPDATE

On January 20, 2017, Donald J Trump was sworn in as the 45th President of the United States. In the few weeks since President Trump took office, he has nominated his Cabinet Secretaries and has signed a number of Executive Orders, several of which will impact Indian Country.

Confirmations of President Trump's Cabinet. President Trump has filled his Cabinet. President Trump has nominated and the Senate has confirmed all members of the Cabinet, meaning each Federal Agency has a Secretary to lead the Agency with the President's agenda. The President has to fill 559 key political appointments within the Federal Government. Of the 559 positions, 39 have been confirmed, 64 have been formally nominated and 15 await formal nomination, leaving 441 positions currently vacant as of June 6th. Those vacant positions include the Department of Interior Assistant Secretary- Indian Affairs, Special Trustee for American Indians, Director of the Indian Health Service and Assistant Secretary for Public and Indian Housing.

The Cabinet members include: Jeff Sessions for Attorney General, Rex Tillerson for Secretary of State, General James Mattis for Secretary of Defense, Elaine Chao for Secretary of Transportation, Betsy DeVos for Secretary of Education, John Kelly for Secretary of Homeland Security, Nikki Haley as UN Ambassador, Steve Mnuchin for Secretary of the Treasury, Ryan Zinke for Secretary of Interior, Sonny Perdue as Secretary of Agriculture, Wilbur Ross as Secretary of Commerce, Alexander Acosta for Secretary of Labor, Tom Price for Secretary of Health and Human Services, Ben Carson for Secretary of Housing and Urban Development, Rick Perry for Secretary of Energy, David Shulkin for Secretary of Veterans Affairs, Scott Pruitt for Administrator of the Environmental Protection Agency, Mick Mulvaney for Director of the Office of Management and Budget, Linda McMahon for Administrator of the Small Business Administration and Robert Lighthizer for US Trade Representative.

All Federal Agencies work with Indian Country, but the most notable for upholding the Federal Government's Trust Responsibility is the Secretary of Interior. Ryan Zinke was confirmed to serve as the Secretary of Interior. NCAI sent letters of support to the Trump Administration and the Senate Energy and Natural Resource Committee for the nomination of Ryan Zinke as Secretary of Interior. As a Congressman, Representative Zinke was an advocate for tribes in his at-large district of Montana. During his Confirmation hearing, he fielded questions about Tribal Sovereignty well. Secretary Zinke also testified before the Senate Committee on Indian Affairs where he stressed the importance of sovereignty meaning something and supported Self-Determination. David Bernhardt has been nominated as the Deputy Secretary for the Department of the Interior.

Executive Orders:

Affordable Care Act. President Trump signed Executive Orders in January, setting up the first Executive steps in repealing President Obama's healthcare policy. The Executive Orders directed agencies to waive, defer, grant exemptions from, or delay implementation of provisions that place a fiscal burden on states or impose a cost, fee, tax, penalty, or regulatory burden on stakeholders. Since then, the House of Representative has passed the American Health Care Act which is waiting for Senate approval.

Dakota Access Pipeline Memorandum On January 24th, President Trump signed an Executive Memorandum directing the Secretary of the Army, Assistant Secretary of the Army for Civil Works, and the US Army Corps of Engineers to take all actions necessary for a Pipeline Approval Review. This memorandum states that “review and approve in an expedited manner, to the extent permitted by law and as warranted, to construct and operate the DAPL including easement or rights-of-ways to cross Federal areas under section 28 of the Mineral Leasing Act, permits or approvals under the Clean Water Act, permits or approvals under the Rivers and Harbors Act and other federal approvals that are necessary. On February 8th, The Army Corps of Engineers provided notice to Congress that it intends to issue the easement for the Dakota Access Pipeline, and to terminate its study of alternative routes and effects on tribal treaty rights. Next steps will include litigation to uphold tribal rights. NCAI will continue to advocate for the treaty rights of the Standing Rock Sioux Tribe and all the Missouri River Tribal Nations on this issue.

Executive Order 13792- Review of National Monuments. On April 26th, President Trump signed an Executive Order ordering the Department of the Interior to review all National Monument Designations that are greater than 100,000 acres and were designated after 1996. The Antiquities Act of 1906 allows for President’s to issue Presidential Proclamations to create National Monuments to protect significant natural, cultural or scientific features. The Antiquities Act was originally passed in order to protect Native American cultural properties such as Chaco Canyon and Mesa Verde. This Executive Order specifically asks for the review of the Bears Ears National Monument in Southern Utah, where tribal historical sites currently are protected. Since the Executive Order, NCAI has submitted formal comments to the Department of Interior in support of the Bears Ears National Monument in Southern Utah. The Department of Interior will also conduct listening sessions at the NCAI Mid-Year Conference. The Department of Interior will be accepting comments on all National Monuments under review, except Bears Ears, until July 10th.

Reorganization of Federal Agencies. On April 12, 2017 the Executive Office of the President, Office of Management and Budget released a Memorandum for Heads of Executive Departments and Agencies to develop comprehensive plans to implement President Trump's executive order to reorganize the executive branch. In this plan, the Office of Management and Budget (OMB) Director Mulvaney laid out an overview and process for agencies to consult with the OMB on agency reform. Immediate actions will include maximizing employee performance, and an agency reform plan. NCAI sent a letter to the Department of Interior Secretary Zinke underlining the importance of upholding the federal trust responsibility when implementing this executive order. The letter requested information on the process of consulting with tribal nations when carrying out this executive order. The Department of Interior will host a listening session on the Reorganization at NCAI’s Mid-year Conference on June 12th.



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